CONCERNING SOLICITORS

Concerning Solicitors

By

One of Them

With a Preface by

The Rt. Hon. Augustine Birrell, K.C.

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TO

MARTIN WILLIAM STARLING

PREFACE

I REMEMBER hearing that truly eminent man, Sir William S. Gilbert, dwell with grave humour, as his manner was, upon what he alleged to be the fact that though were a strange clergyman to be suddenly introduced into a small company of men and women, the latter predominating, there would be noticeable a little flutter, a slight bustle, a sensation (though it may be of the mildest description), yet were the stranger to be announced as a "Solicitor of the High Court" nothing of the kind would happen. This difference struck the author of "Patience," a close and shrewd observer of all the nicer shades of distinction in social life, as exceedingly curious.

Whether Gilbert was right in this particular observation of his I cannot say, never having

had the good fortune to witness the experiment; but it is, I think, noticeable that Solicitors, *as such*, have never received that degree of attention from critical and serious observers to which their predominance in our lives and deaths seems to entitle them.

The following little book, "Concerning Solicitors," should therefore be welcomed, for it is written by an experienced member of the Tribe.

In a bye-gone age there appears to have been a class of men called "Attorneys," a distinctive title now abandoned, who, if literature is to be believed, enjoyed an evil reputation, being usually associated with such vile epithets as "petty," "prowling," or "pettifogging." Who now reads "Simple Susan," by Maria Edgeworth? I did, sixty years ago; and to this hour the word "Attorney" instantly recalls the rogue (his name was Case) who brought misery into the home of the heroine.

Gilbert Glossin, in "Guy Mannering," was not, it is true, an Attorney, but a Writer to the Signet. Childhood, however, knows nothing

of local terminologies, and to many tens of thousands of honest English boys living between the dates 1815 to (say) 1860, Gilbert Glossin stood side by side with "Lawyer Case" as one of "the worst characters in fiction."

Then, after a while, the resplendent genius of Dickens "rose, reddened," and burst upon the world, and we had "Bardell *v.* Pickwick," and other sketches of the actual practice of the Law and of some of its practitioners, as it and they existed in the year of our Salvation, 1837. That once popular novel "Ten Thousand a Year" strengthened the tradition.

The Judicature Acts (*circa* 1875) may be taken as the dividing line between two legal worlds. To-day, were the most bookish of mortals and elderly of men to be suddenly introduced to a "Solicitor of the High Court," he would not, I feel sure, instantly bethink himself of these tales of his youth. And yet of what would he think? He might easily find it difficult to attach a precise significance to the words. Judges, Advocates, Stock Brokers, even Archdeacons are men of whose

professional functions a guess can be given—but a "Solicitor of the High Court"—What does he do? Where does he practise? How far can he go? What may he hope to become? Over these matters, familiar as they may be to many, a fog still hangs, not, indeed, so thick as that famous one in the opening chapter of "Bleak House" (one of the most magnificent of all book-openings), but still thick enough to make its dispersion desirable. This book ought to have a clarifying effect upon the general atmosphere.

A celebrated Barrister, the leader of his circuit, or the still prouder "Special" who has been brought from afar and at great expense to the Assize Town, has always been a "moving picture" in the eyes and minds of the populace. Our great bruisers, Tom Cribb or Tom Sayers, our famous jockeys, Fordham or Archer, our popular preachers, (I forbear naming any of them out of respect for the Cloth) may hold their own in the imagination of the people, but do not do more than hold their own with our great advocates.

The Erskines, the Scarletts, the Broughams, the Cockburns, the Karslakes, the Parrys, the Russells, and many another "Gentleman of the long Robe" were in the days of their energy the cynosures of every eye that beheld them.

As these great men left their lodgings in the Assize Town and made their way to the Court to prosecute or defend, how eagerly were they followed, though at a respectful distance, and what stories were in circulation in praise of their prowess and, sometimes, of their almost devilish cunning, for in the popular estimate the Law is always something to be "got round."

I remember some of these heroes of the old Northern Circuit. What a popular man was John Holker! How sleepy he looked, and yet, so it was reported, the sleepier he looked the more dangerous he was. He would swallow you up between his yawns. As I write I recall a bit of his cross-examination of a plaintiff who had been terribly and visibly mauled and maimed in a railway accident and was seeking damages from the Lancashire and Yorkshire. Damages of course he must get—but how much?

In a very short time under the skilful, friendly, not to say flattering hands of this sleepy, clumsy, seemingly half-educated Holker the unhappy plaintiff was to be heard almost heatedly declaring that, lamed and half blind as he had become, he still found himself a match for his old competitors on the Liverpool Corn Market, his business, so he added with sarcastic, but costly, emphasis, being done with his brains "as I hope yours is, Mr. Holker."

The poor deluded man got his damages—but they were, like himself, sorely maimed and reduced.

Books about Barristers are easily made and that, perhaps, is one of the reasons why they are usually so bad. Books about Solicitors are harder to write and there are consequently fewer of them, and yet other lawyers, no less than Advocates, are concerned with litigation, but their fame is not spread in pot-houses or much talked about at Bar messes. There have been famous Solicitors as well as famous Barristers.

What a position was held in Liverpool, in

my early days in the law, by the late Mr. Bateson, the senior partner in a well-known firm! So great was his reputation throughout Lancashire as a commercial lawyer, and a man of the highest honour and good sense, that he was able to nip more Liverpool litigation in the bud than ever found its way into the Chambers of the most eminent and hard-worked of Counsel.

Sir John Hollams long occupied the same position in London, and on his own very varied lines he was as distinguished and useful a lawyer, though perhaps not so learned a jurisconsult, as Roundell Palmer or George Jessel.

Our large towns—Manchester, Birmingham, Newcastle, Bristol, etc., can supply the names of famous solicitors who in their lives have illustrated the truth of the maxim of Lord Hannen's (one of the wisest and greatest of our modern Judges) "that an honourable Solicitor is a family blessing." What volumes of testimony to the truth of this maxim might be collected.

Nor should the municipal services of Town Clerks (an office for which Solicitors are eligible)

be overlooked. A good, wise Town Clerk is a municipal blessing, and as Municipalities enjoy few blessings they should be all the more grateful for this one and be careful to see that they get it.

The seventh chapter of this book is devoted to the question of fusion of the two branches of the legal profession, Barristers and Solicitors. It is treated with becoming gravity and in a conservative spirit. As the author points out, the question really resolves itself into one of partnership between the man who does the "Office" work and the man who does the "Trial" or "Court" work. There is an essential distinction between these two bits of work which cannot be got rid of by the easy and popular process of a change of name. It is by partnership that fusion has been effected in other countries.

Whether the public interest will be better served should be the dominant consideration.

A constant supply of honest, well-educated, sensible, *Office* Lawyers (whether called solicitors or not) and of honest, well-educated, high-minded *Advocates* (whether called Barristers or

not), *both* nurtured in the best *professional* as opposed to *commercial*, traditions is the supreme *desideratum*.

How fusion would affect bills of costs and Counsel's fees it would be difficult to surmise—but our author has wise things to say under both these heads.

The Sex question has suddenly solved itself. The walls of Jericho have fallen. "As I write these words the first female Solicitors and Barristers are starting their studies, so that my predictions should be verified or contradicted within ten years from this date." So says our author, and in his sixth chapter will be found his predictions.

I am not likely to be alive ten years hence, but I am prepared to believe that before one hundred years are sped England will have seen at least two famous women Judges on the Bench of the High Court, and that neither of them will be in the least like Baron Bramwell or Sir George Jessel, but perhaps none the worse Judges on that account.

As the book proceeds its Author reveals a

hearty, deep-rooted hatred of Bureaucracy and Government Offices. He is emphatically for the Man *versus* the State. The crude, shallow despotism of the half-educated expert, the nonchalant insolence of the salaried official, dreaming all the time of his pension and his possible C.B., the dreary probable prospect of the decline and death of the love of individual liberty under the asphyxiation of an organized State system, with possibly Civil Servants sitting as Judges in matters of administration—all these facts and forebodings impart fire to our author's pen and prove how the breast of a Solicitor of the High Court can glow with emotion.

On the important question of a Ministry of Justice and the Poor, the author, in his anxiety to bring justice within reach of those who need it most, relaxes a little of the austerity of his anti-bureaucratic opinions, and in his ninth chapter makes out a strong case for the creation of a new State Department.

Our Author does not shirk the painful theme of the "fraudulent solicitor," usually a trustee, of whom it may be said that the extent of his

depredations is the measure of the confidence which experience has taught clients and co-Trustees can safely be reposed in their Solicitors. But a distinction must always be made between a just and reasonable *confidence*, and a lazy shirking of plain duty on the part of the lay Trustee.

Our Author has some very shrewd remarks to make on the question of partners in the business of a Solicitor.

The last chapter in the book, on "The Vocation of a Solicitor," presents his calling in some of its finer aspects.

An honest Solicitor may not perhaps be "the noblest work of God," but he is certainly one of the most useful, and has more opportunities of being so than any other professional man. May his Tribe flourish!

AUGUSTINE BIRRELL.

May, 1920.

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"The two great evils of this country are taxes and attorneys."—THE CHAIRMAN OF COMMITTEES OF THE HOUSE OF COMMONS IN 1854.

"An honourable solicitor is a family blessing."—LORD HANNEN.

"Et si justitiam quis diligit, labores hujus magnas habent virtutes: sobrietatem enim et prudentiam docet et justitiam et virtutem, quibus utilius nihil est in vita hominibus."—*Liber Sapientiæ.* Cap. 8 v. 7.

INTRODUCTORY

I AM acquainted with but four good books about solicitors. The first is "An Attorney in Search of Practice," which appeared anonymously in 1840. It was in fact written by the late Sir George Stephen, who died in 1879. About the same date appeared some lectures given by Mr. Samuel Warren to the Law Society. This book has sterling merits, but is not nearly so racy or good as Stephen. In 1896 Messrs. Reeves & Turner published "A Short History of Solicitors," by Mr. E. B. V. Christian, which makes it unnecessary for me to deal at any length with the historical side of the subject. Mr. Christian more recently published a most entertaining volume entitled "Leaves of the Lower Branch"; but this deals more with the personal habits and achievements of solicitors than with the questions of the day and the future of the profession. We live in an age of

such acute transition that it is necessary for every profession to take stock of how it stands and what immediate changes are likely to occur. As Mr. Christian has written, "The duties and functions of the profession have constantly increased with an inevitableness almost suggesting the operation of a natural law, so that now a solicitor may be called upon to advise on any incident affecting the person, the property, or the reputation of men."

Even those who are most anxious to take away the solicitor's work from him and turn it over to a Government Department are compelled to admit that his work is of great importance to society. He is a jack-of-all-trades and does not have to specialise as rigidly as a barrister; his work involves familiarity with the business of accountants, surveyors, stockbrokers, and all other persons who are connected with the management of property, whether in cash or in land. The first professional attorneys were probably like other lawyers in ecclesiastical orders; but now the lawyer has begun to displace the churchman, especially in

all questions of marriage and divorce, and although no client would accept the imposition of a penance from his solicitor other than paying a bill of costs, he is yet often ready to take a solicitor's ruling on a moral as well as on a legal point.

Perhaps at the outset it may be necessary to mention that the word "attorney-at-law" was applied before 1874 to anyone who practised before the King's Bench; whereas the practitioner in the Court of Chancery was known as a "solicitor in equity." The power of attorneys and solicitors has always rather alarmed the community. In the Middle Ages the State controlled the profession by strictly limiting its numbers as far as it could. The first instance is in 1292, when Parliament ordained that one hundred and forty attorneys were quite sufficient for the community. Later on the State bound the attorneys and solicitors very strictly in regard to the question of costs and qualification, and to-day, compared with other professions, solicitors have to pass a rigorous examination, are taxed by the State for permission to practise,

and are at a great disadvantage in obtaining remuneration for their services. The fee of 6*s.* 8*d.* for a consultation was fixed in the seventeenth century, when the value of money was, to say the least, very different from what it is now. Nevertheless their power and influence increased throughout the nineteenth century, and coincided with the rising prosperity of the middle classes. This prosperity led to better education, so that in the 'seventies there were a certain number of solicitors who had been educated at a public school and even at Oxford or Cambridge. To-day probably fifty per cent. of solicitors have received as good an education as barristers and have also had to pass a much more exacting examination in legal knowledge. The more prosperous kind of solicitor has usually built up a big agency or company practice, or enjoys a good family practice. Then there is a little group which specialises in divorce practice; but this group is perhaps less prosperous because divorce practice is nowadays regarded as less disreputable than it used to be.

Among the poorer practitioners are the police court and county court solicitors, who are often excellent advocates, and the speculative solicitor, who may sometimes be unscrupulous in promoting litigation but who, as things stand to-day, is the one hope of the poor man who wishes to obtain justice, as Lord Russell of Killowen once pointed out.

The profession, however, still excited a certain amount of hostility. The Incorporated Law Society carried through a number of reforms in the nineteenth century, especially in regard to conveyancing and the law of trusts; but it came into conflict with the Government in 1896 in regard to the question of land transfer; and the compulsory system of land transfer set up in the County of London under the auspices of Lord Halsbury has certainly done much to justify the objections of solicitors to it when the question was first raised. Perhaps, however, the most serious blow to the profession was the series of big frauds which occurred in 1900 among the most apparently respectable firms. The proximate cause was

probably the general fall of Stock Exchange securities due to the Boer War and the preceding period of golden prosperity. Solicitors are exposed to very great temptation in regard to their clients' money. Their clients are compelled to trust them to a considerable extent, but often do so more than is really wise, and a solicitor with considerable sums of cash at his disposal is often tempted either to speculate with it or to embark on imprudent loans. Moreover, no solicitor can run a business of any size without either having a very good head for figures himself or employing very expert cashiers, and among the smaller fry of the profession cases have been known where counsel's fees were paid out of the same banking account as the butcher's bill.

In any case, the public were profoundly and not unreasonably shocked by a series of bankruptcies and prosecutions, and the burden of the loss fell not only on the ordinary client but also on the lay trustee who had implicitly trusted a solicitor, who was often his co-trustee. Trustees ought always to be men with some

knowledge of business, and to be paid for their trouble, as they are in America. But in this country they are usually friends or relations of their beneficiaries, and often know very little of trust business. The result of the catastrophe was that various proposals were made, among which that of a Guarantee Fund among solicitors was perhaps the most promising; but it failed to gain acceptance. So it happened that the lovers of bureaucracy again won the day, and appointed the Public Trustee to look after all trusts and especially the estates of poor people.

I shall, in a later chapter, discuss the argument for and against the existence of such a department; but as these remarks are by way of being merely introductory I will pass on to other subjects which will also have to be discussed at length, but the importance of which justifies the publication of a book on the subject.

There is first of all the question of what is called Fusion; namely, how far the present division between barrister and solicitor benefits either the professions or the public. The

chances are that sooner or later we shall imitate the Canadian and American system, under which any man is at liberty to practise at the same time as a solicitor or barrister; which system was advocated many years ago by Walter Bagehot.

Then comes the question of female solicitors and how far most women can adapt themselves to the rough-and-tumble existence of a solicitor, especially if they happen to be married. There is further an interesting possibility of divergence between men and women as to the advice that they are likely to give to their clients in matters of sex morality.

The question of solicitors' clerks also demands discussion, for though solicitors are underpaid in comparison with other professions their clerks fare worse, and are not likely to fare better until solicitors are allowed the same rise in their charges as other professions have received since the war.

Perhaps, however, the most important point to be considered is how the poor are to get justice, which they ought to get as easily as they obtain medical or surgical treatment. The

poor man ought to have access to as good a legal adviser as he has to a good doctor or good parson. If the community cannot step in with the help of endowments, as it does in the case of the Church, then the State must fill the gap, as it does in France in the case of banking facilities. No government can be on a secure foundation which denies the poor justice while it gives them doles. The existing facilities of the Poor Persons' Department are not nearly what they should be, especially in the case of divorce, where poor people cannot possibly bring their witnesses to London. This argument should appeal quite as much to the opponents as to the supporters of divorce, for poverty may often make it impossible for an innocent party to defend a suit.

I venture to think that the crying need of my profession to-day is in acquiring the same tradition of public service as the medical profession. If the Incorporated Law Society would devise a scheme for rendering the same service to the poor as doctors and surgeons give, the profession would gain enormously

in prestige and popularity. There can be no question that the community gets better results from the voluntary work of a professional man than it will ever get from bureaucracy, for nearly every bureaucratic system ends in the public servant becoming a public tyrant.

CONCERNING SOLICITORS

CHAPTER I

SOLICITORS

THE former part of this book deals with the present condition of the profession, and the latter part with its possible future developments. Hence this chapter will be followed by one on clients and another on solicitors' clerks. Later chapters, however, deal with the question of female solicitors, what is called "fusion," public departments, and justice for the poor. On the question of fusion I have been fortunate enough to obtain the assistance of a colleague who has had experience of practice under both systems, for he is now an English solicitor and has in the past lived in a legal society where nearly every lawyer has combined the functions of a barrister and a solicitor. This latter arrangement has always rather shocked the British mind. In 1845 the

Solicitor-General said that it was "against principle," and no doubt on this side of the Atlantic such a person has the semblance of a legal hermaphrodite.

In this chapter, however, I shall deal with the solicitor as he exists in England, where he has the right of audience in the inferior courts but none in the High Court; but where on the other hand the client cannot, since 1850, approach a barrister without the intervention of a solicitor. More than twenty years ago I was once sitting with a dyspeptic gentleman at what was in those days called a Women's Exhibition. Women were riding bicycles and doing many other things which in those days were considered revolutionary, and after dinner my friend turned to me and said, "Woman in the singular is unnecessary, and in the plural repulsive." I fear that the public at large have often thought the same about solicitors; but however repulsive solicitors may be it is by now quite clear that they are necessary. I once visited a minute island off the coast of Italy with a client of mine and asked him how

the islanders lived. He replied that they were like lawyers, for they lived on the fish that they got out of the sea, which was all round them. This view may be popular, but it certainly is not correct. No civilised society has ever existed without lawyers of one kind or another, for any civilised society is inherently complicated. For instance, some industrious laymen got into the habit of proving wills of which they were the executors at Somerset House without legal aid; but this simplicity was rudely destroyed by the Death Duties of 1894, which introduced fresh complexities requiring expert treatment.

The enemies of the profession, as for example Fabian writers about different professions, maintain that solicitors are unlearned and ungentlemanly and have no public spirit. This judgment is very ignorant. There is certainly no more Philistine narrowness in the ordinary solicitor than in the ordinary barrister, and the solicitor often has sounder ideas of morality than a barrister who has thought about nothing but the legal aspect of things

since he left the nursery. In any case the solicitor passes a far more rigid examination in law, and the Incorporated Law Society have done much more for legal reform in the last hundred years than the Bar Council. It is sometimes thought that a University training is very exceptional in a solicitor. I remember in fact being told that any solicitor was likely to be excluded from the Athenæum because it would be presumed that he could not have been at a University. To-day, however, solicitors are drawn very largely from the ranks of all Universities, and the first facilities given for this purpose date from 1821.

When once the solicitor has passed his examination he ceases as a rule to be a specialist. Legally speaking he is a Jack-of-all trades; but his examination ought at any rate to have trained him to know when it is necessary to consult counsel. It is sometimes said that the solicitor is always in such a state of doubt that he has to go to counsel; but after all, counsel are not easily consulted in the country, and there are always certain

solicitors whose opinion might be preferred to that of counsel on certain points. A solicitor's activities are multifarious enough. In the same day he may be mixed up with several sorts of litigation, as for instance King's Bench, Chancery, County Court, Bankruptcy, Probate or Divorce Court, or Police Court proceedings. In the intervals he may have to negotiate the sale of a house, to draft the memorandum and articles of a new company, to revise a draft mortgage or draft appointment of new trustees, and to supervise the winding-up of an estate and the presentation of an account for payment of death duties. In addition to these duties there are usually odd jobs to be performed, such as burying a client with no relations at home or abroad, rescuing young persons of both sexes from imprudent marriages, or meeting blackmailers in the gate.

The variety of this work sounds interesting; but it is also distracting and involves a series of rapid decisions. The responsibility is great, for a false move may involve serious damage to a client's fortune or reputation, and,

unlike a barrister, a solicitor can be sued for negligence. Mr. Warren's book on the duties of attorneys is enough to give any solicitor a nightmare every night. The combined strain on nerves and temper is extremely trying to any solicitor who is not as strong as a bull and fairly thick-skinned as well. The incessant telephone calls and shutting and opening of doors and answering questions and making up one's mind in a hurry reduce the weaker brethren to odd forms of hysteria, and a doctor who kept a nerve-rest home once informed me that fifty per cent. of his hysterical patients were solicitors.

A solicitor should not only be abnormally robust but also abnormally virtuous. As in the case of the doctor, it is only too easy for him to make money out of fools even without giving them any undue encouragement. All the fool wants as a rule is to be indulged in self-complacency, and the higher the fee he pays for this operation the more likely he is to recommend his solicitor to his friends. There are certain firms of solicitors to-day who, after

pursuing this policy for many years, can obtain in this way enormous fees for comparatively trifling services. This type of client often prefers what may be called personality as opposed to individuality. He would rather take advice from a man who talks with the self-assurance of a politician or a drill-sergeant than from a more unassuming man who has what may be called individuality, namely, an unusual combination of intellectual or moral qualities. Some clients will bestow unlimited confidence, if once they know that the solicitor agrees with them on some perfectly irrelevant point. I knew of an old lady who, having sustained severe losses from a defaulting solicitor, came to consult another, but refused to state her business until she had extorted from her new solicitor an assurance that her late solicitor, who had committed suicide, was beyond all doubt burning in hell-fire for ever and ever. This point once agreed, she would have handed over banknotes and bearer bonds to the new solicitor without any further qualms about his integrity.

The solicitor is, therefore, subject to many insidious temptations. It is usually much easier to let a client do what he likes regardless of his true interests, for it is always difficult to convince a foolish client that his desires can conflict with his interests. A client is only too apt to arrive with a pre-conceived notion of what has got to be done and to go elsewhere if the solicitor criticises any item of the programme. This particularly applies to questions of litigation. It is easy for a solicitor to involve a client in a slander or libel action resulting in a verdict for a farthing damages. In such a case the solicitor will generally receive most of his costs from the other side; but the client will have endured a most distressing ordeal of anxiety, before the trial and in cross-examination during the trial, which will not reconcile him to the equivocal result. These observations apply with even greater force to contesting a will or initiating a divorce suit, for there can be no greater mortification than failure in upsetting a will or substantiating a matrimonial accusation.

Then again there are financial temptations. If a solicitor is on his beam-ends he is naturally tempted to use his client's money for temporary difficulty when he knows that the client will not want the money for perhaps two or three weeks. If on the other hand he is prosperous, there is always the temptation to finance a speculative client, either with a view to getting more business or sometimes even out of vanity. One of the worst cases in 1900 was that of a firm which prided itself on never sending away an applicant for a loan provided the loan was large enough. Then again, some solicitors are confiding and innocent as compared with the type of financier who pursues solicitors in order to carry out his schemes. Perhaps the best safeguard of a solicitor is an unsympathetic partner, for mutual criticism is always useful, and it was noted twenty years ago that most of the bad frauds occurred where the partners of the firm were brothers or cousins.

From the above remarks it is obvious that a solicitor's occupation is no bed of roses. His best and most conscientious work is often not

appreciated by the client for whom it is done, and the type of client who would appreciate it is not apt to need a solicitor except for humdrum transactions. A solicitor must be content if his bill is paid without grumbling and must never expect gratitude. A solicitor, therefore, will never do his work really well unless he has a sincere sense of duty to his clients (whether he likes or dislikes them) and determines to treat them fairly and honestly whether they are pleased or displeased. The ordinary solicitor makes very little money in return for his exertions as compared with the ordinary trader or stockbroker or bureaucrat. Probably the only consideration that makes the profession worth practising at all is a sense of doing and being able to do some real good in the world. Few men and women who have lived through the last ten years can preserve much faith in collective human intelligence. Nevertheless, much can still be done for individuals by individuals, and the sense of professional duty and integrity will last as long as any human society.

CHAPTER II

THE CLIENT

CLIENTS are either acquired or inherited. In regard to the latter class I have known cases where a corporation or a family have remained with the same firm of solicitors for nearly two hundred years, and their successors, if any, will probably continue as long as the firm. The acquired client arrives for a variety of reasons. Sometimes he has heard of the solicitor at a tea-party; sometimes he likes the sound of his name—like Walter Pater, who wanted to give a scholarship at Brasenose to a candidate called Sanctuary. Sometimes he has seen a letter in a newspaper which he likes; sometimes he credits the solicitor with some special form of devilry which he thinks will be of use to him; and nearly always he is inclined to think of his solicitor as a kind of magician. And this is especially the case where the

solicitor has any reputation for charging large fees. Then again, he may have a vague idea of acquiring prestige by saying that he employs a particular firm of solicitors, or he may choose a solicitor because he has a handle to his name.

There are three useful rules to be observed by a client in dealing with a solicitor. In the first place, he should not anticipate too much and expect his solicitor to perform miracles, even though this may be the principal reason for his having consulted him.

In the second place, he should restrain the very natural human impulse to suppose that the solicitor has got nothing else to do but meditate on one man's business. It is true that many solicitors think of their clients' affairs in the morning bath or even, like the writer, have a writing-pad always by the bedside and jot down stray reflections and notes in the early hours of the morning. Nevertheless the fact remains that if the solicitor is worth consulting at all he is bound to have more than one client.

In the third place, the client should make up his mind at the start that his solicitor is either honest or dishonest, and that if he is honest he should be given all reasonable latitude in the matter of prospective costs within the stated limits of what the client can afford. In regard to any money or securities with which he entrusts the solicitor he should bear in mind that no sensible solicitor ever objects to a client asking to see his securities at least once a year, and that the only easy opportunity that a solicitor has for misappropriating money is when a mortgage is paid off. It so happens that although the mortgagor has to execute a mortgage it is not necessary for the mortgagee to execute it (although he has to execute a reconveyance when the mortgage is paid off); but a client will always be wise, when he hears of a fresh mortgage investment, to have a look at the title deeds.

In the fourth place, he should always be careful if he finds his solicitor obviously humouring or flattering him; for although this behaviour may have no sinister purpose it

shows that the solicitor is not taking his client fully into his confidence. There is nothing that would ever make me distrust a solicitor more than lack of candour or sincerity, especially in telling me the truth about myself.

On the other hand, it follows that the client should not limit his confidence in a solicitor. He should be perfectly frank and conceal nothing, except perhaps where he sees that the solicitor might prefer not to know too much; but such cases are very rare. It follows also that the client should almost invariably let his solicitor know his reason and motive for any given course of action. This particularly applies to questions of testamentary disposition, where a solicitor can often suggest a better or safer method of carrying out his client's intentions. He must bear in mind that his solicitor will not be able to do his best unless he feels that he has his client's complete confidence and knows that a distorted version of his advice will not be submitted to the criticism of innumerable relations, friends, or possibly other solicitors whom the client meets

at dinner; and above all, that the solicitor expects him to exert his mind sufficiently to understand the situation and to take full responsibility in the last resort for any decision.

I fear that these abstract rules may seem rather dull without concrete instances; but it is a delicate matter for any solicitor, whether in practice or not, to give even anonymous illustrations of his meaning, although a book of this kind would necessarily be most entertaining. Those of my readers, however, who want entertainment of this kind cannot do better than read Sir George Stephen's "Attorney in Search of Practice," which combines instruction with diversion, and whose remarks about his clients are extremely soothing to the practitioner to-day, even though the book was published eighty years ago and deals with such antiquated problems as saving a client from a duel in spite of himself. Unfortunately for Sir George Stephen, his book achieved such popularity that it gave rise to the suggestion that he had been guilty of indiscreet revelations, and he ultimately gave up his profession for

literature, writing a novel called "The Jesuit at Cambridge," and a Life of Christ. In vindication of his clients it is perhaps only fair to quote the opinion of his descendant, Sir Leslie Stephen, who writes, "He was, I suppose, one of those very able men who have the unfortunate quality of converting any combination into which they enter into an explosive compound."

I would only end this chapter by paying a tribute to clients as a class. They are often patient and long-suffering to a saintly degree, and they endure with astonishing fortitude and amiability disasters which they could never have anticipated. Samuel Butler wrote that luck is seven-eighths of life, and nothing can establish the faith of the solicitor in human nature so much as contemplating the courage and equanimity with which men and women face undeserved misfortune. It is, after all, the affection and friendship of his clients that alone make a solicitor's life tolerable.

CHAPTER III

SOLICITORS' CLERKS

MR. CHRISTIAN in "Leaves of the Lower Branch" well remarks:—"Attorneys, like Lucy, have always been those whom there are none to praise, and very few to love." This is not the place to recapitulate Mr. Christian's admirable *apologia* or his efforts to reconcile the paradox of the average man's affection for his own solicitor and detestation of everyone else's solicitor. What Mr. Christian has not done, but what I propose to attempt, is the vindication of the solicitor's clerk, who has borne a disproportionate share of the calumnies heaped upon his employer. It is of course true that every solicitor has at the outset been a solicitor's clerk; but I confine myself entirely to those who have been clerks without obtaining articles and who either attain to such dizzy heights as

Charles Dickens and Benjamin Disraeli in the past or Arnold Bennett and Horatio Bottomley to-day, or continue in harness all their lives.

These excellent men for the most part lead a life of loyal service and single-hearted self-effacement. Their best work is unknown to the public. Their diplomacy in the best instances fulfils the double task of humouring both their employer and his clients. They do ten times the work of that rather idle class, barristers' clerks, and if I could choose to be ruled by a Cabinet of any one class I should certainly choose solicitors' clerks as being the most diligent, hard-working, and public-spirited persons eligible; though some would certainly lack just that quality of amusing and entertaining miscellaneous audiences which is indispensable to the successful politician. Yet the solicitor's clerk is perhaps the commonest butt of the novelist, and even in the law courts a certain social *status* has recently been held to justify an assault and battery on a solicitor's clerk which would have been unpardonable if committed on anyone else.

Their tastes are highly intellectual. Painting in water-colours, playing on the violin, keen interest in literature, science, and art, and a fairly extensive knowledge of classical music occur to me as salient characteristics. Their knowledge of life and affairs is not only extensive but peculiar. Their knowledge of law, both practical and theoretical, might profitably be emulated by the officials who are employed nowadays to set more and more booby traps and obstacles to let and hinder the unfortunate clerk on his daily round and common task. The solicitor's clerk is extremely superior in every important respect not only to the barrister's clerk but also to the casual slapdash stockbroker's clerk, or to that blind slave of routine, the inflexible banker's clerk. In religion he is, for the most part, "progressive"; in politics he is, with a noble public spirit, usually a tariff reformer, though fully aware that he, with a fixed salary, would suffer more heavily than anyone else. His relaxations are few, and I imagine that the interest in his work and in seeing the foibles of the world alone tempers

the grey monotony that would otherwise overcast his existence.

Solicitors' clerks stoically bear the burden that our political wisdom is daily making more intolerable for the poorer professional classes. They pay higher and higher rates and more and more as the cost of living rises. Their social prejudices and fear of infectious diseases prevent their sending their children to the State schools, and even the birth of a child dislocates their finance for a whole year or more. They are too proud to obtain any share of the subsidies that come to the working-man, or even tips from their employers' clients, and their black coats expose them to the attentions of the income tax collector, who dares not tackle the wealthier type of skilled artisan. The working-man is to be insured by the State against risks of all kinds. Who cares about the unfortunate clerk? His employer may, and sometimes does, help him to insure his life; but both are nevertheless to be saddled with the cost of insuring other people's workmen. The clerk who receives no help from

his employer is left severely alone to the burden of increased taxation.

There are many types of solicitors' clerks, and they have been described for all time by Charles Dickens. The articled clerk whose articles last for either three years if he has been to a University and five if he has not is, as Dickens says, often a rather sporting young man with a certain amount of money to spend. His articles are modelled on the old apprentice deeds of the eighteenth century, and a Master of Arts from Oxford or Cambridge is sometimes mildly astonished to find that he must execute a covenant not to steal his master's stamps and commit many other offences of the same kind which an apprentice of the eighteenth century living in his master's house might have been inclined to commit. In these days, however, the articled clerk's life is more dingy and gloomy than of old by reason of the very stiff examination he has to pass before he can be admitted as a solicitor.

The graver type of clerk leads for the most part an ascetic existence, especially if he is a

married man. Loyalty to his employer combined with interest in his work make him busy enough to take a certain amount of work home with him in order to digest the more difficult part of it outside the interruptions of his office. In old days he often liked to feel that his son would succeed in his footsteps and continue his traditions; but in these days when men get paid for cheating the community by cornering commodities ten times as much as they get paid for good service to the community their parental solicitude naturally turns to thoughts of what is called a commercial career for their offspring.

The clerk is in these days rarely happy except when he is young enough not to feel tired. I can remember a young and dapper clerk in spectacles, secretary to a partner of mine who was killed in the war. Like his chief, he was young, amiable, industrious, and versatile. He fought on three fronts, and although one might have thought that his vocation was the pen he did wonders with the sword and was uniformly cheerful

under the most horrible conditions. His bright and romantic existence was never clouded by the strain of every human relationship that peace has brought with it.

But perhaps the more unhappy type of clerk is the man who with more money at his command could have indulged his instinct of rebellion against the tyranny of the herd. I can remember a typical figure whose ancestry was strangely blended, for he had a roystering uncle and an extremely decorous Nonconformist father. This conflict of hereditary tendencies resulted in the young man becoming, at an early age, a Radical and an atheist of a most uncompromising type, in days when his heroes like Bradlaugh and Foote had the same sinister reputation as Lenin or Trotsky. Temperamentally he was not exactly tactful, and his repartees had a corrosive effect on his employers. On more than one occasion he found it necessary to vindicate his criticism of the "Ancient and Modern" hymn book with a poker or a pair of tongs, especially against one of his colleagues, who was not only the beadle

of a city company, but also a Sunday-school teacher, and who preserved a veneration for sacred literature which he did not always extend to the distinction between *meum* and *tuum*. I fear that the heretical clerk's existence was not altogether unruffled; but I am sure that he derived exquisite consolation at times from reading iconoclastic literature at home and heckling Christian Evidence lecturers in Hyde Park. I was touched, after his death, to receive a mourning card with the epitaph on it which he had chosen for himself—"The rest is silence."

No doubt the time is coming when the solicitor's clerk will have his own trade union. Barristers and solicitors are always accused of having a close trade union of their own; but I should like to see any trade union tolerate for one moment the criticisms of a taxing master on a solicitor's bill of costs. Trade union rules are, of course, exceedingly difficult to apply to any highly skilled occupation like that of a solicitor's clerk or an agricultural labourer. The suburban cads who occupy high places in

a modern administration are accustomed to tell the House of Commons that the arduous and versatile occupation of an agricultural labourer is unskilled; whereas, like that of the solicitor's clerk, it demands a great deal of concentration, mother wit, and resourcefulness. Nevertheless, it is true that for these reasons collective bargaining has always been difficult, and the more ungenerous type of employer has taken advantage of the fact. There may, however, be another solution, namely, that men will cease to be solicitors' clerks or agricultural labourers, and the few who remain available will be able to put a good price on their services. So far as my profession is concerned, the public will have to learn that a solicitor's business cannot be carried on without honest and efficient clerks, and that those clerks have to receive an adequate return for their services. If Lord Hannen was right in saying that an honourable solicitor is a family blessing, the solicitor's clerk is entitled to participate in this compliment in so far as he is indispensable to the solicitor.

The problem is, of course, complicated by the possibility of the female clerk supplanting the male clerk. This occurred to some extent during the war; but the experiment was only successful with the exceptional woman. The ordinary woman is not at her best in the rush of office work. She stands too much on her dignity, and haste in work tends to upset the rhythm of it. I have had very little experience myself; but the following criticism * is not without point in these days:—

"I am told by one who has had twenty years of association with women in business that on the whole they are admirable workers, but never capable of continuous self-reliance. Sooner or later they require help and will appeal for it, abandoning all pretences. They will go to pieces suddenly, collapsing without appreciable cause. They cannot take a blow. In honesty and loyalty they are not, my friend thinks, in business inferior to men. In capacity they are inferior, but not necessarily so under

* *Women*, Martin Secker, 1918, pp. 126, 127.

good leadership. What is lacking is physical stability. In every emergency their reaction is emotional. If one is displeased with them they entirely lose *morale*. Upon the consideration in which they are held rests the whole of their happiness in work. Remove that, and they are dishevelled children, weak and vicious and despondent. At all times and in all circumstances they are (to their misfortune in times of distress, but to their incredible fortune in all that consideration which makes for feminine happiness) predominantly sexual. They remain women. Nothing on earth, not even press stunts or the worship of the legendary woman who has taken to khaki and gaiters, can change them. At heart they will remain for ever a sex without power to create. They may for a time be arrogant and domineering; but I do not think they will find men to accept this attitude who are not themselves hermaphrodites. If they fight for livelihood in competition with men they will find men tough and unchivalrous. They will find that they can no longer have it both ways, no

longer make the best of the material world and the world of sex. They cannot, as it were, be both masters and mistresses. That will be the issue of the sex war."

CHAPTER IV

COSTS

SOLICITORS' costs are either in the nature of detailed items or what are known as scale fees. Typical items are charges for letters and interviews and drawing deeds or wills, whereas a scale fee is a fee fixed by Act of Parliament in regard to the sale, purchase, or mortgage of land or the drawing of leases. The fee rises in proportion to the amount of the rent or purchase money; but the fee remains stationary when a certain figure has been reached, as for instance £100,000 in the sale of landed property. The scale fee system follows the same principle as the remuneration of surveyors except that the surveyor's fee, whether for negotiation or for other services, is about three times as large as the solicitor's. The surveyor defends this discrepancy on the ground that he receives no payment if a sale does not go

through, whereas the solicitor can always charge items; but to this it may be replied that a wise solicitor will have to exercise some tact about the amount of his fee if a negotiation breaks down and that the items do not err on the side of generosity. Since the war it has been decreed that a solicitor is entitled to charge twenty per cent. on any bill consisting of "party and party costs" and thirty-three-and-a-third per cent. on any bill which is a scale fee; but considering the inadequate amount of the fees charged before the war and that most other professional men have raised their fees by at least fifty per cent., the solicitor cannot be said to be unfairly favoured.

When I say that solicitors are underpaid I am only quoting the opinion of a judge and certain barristers who have discussed the subject with me. It is true that some solicitors can charge fancy fees for special work, either because they make their clients sign an agreement for the purpose or because the client is not at all inclined to contest the fee having

regard to the nature of the business transacted; but the fact remains that it is very difficult for an ordinary solicitor to obtain remuneration except on the orthodox lines whereby a solicitor may charge a Jacobean fee of 6s. 8d. for an interview and 3s. 6d. for a letter, without being able to charge for a lot of other work which it is difficult to fit into the strait waistcoat of a bill.

A judge whose name I forget was accustomed to say that no solicitor could honestly make more than five hundred a year, and by that he meant that no solicitor should be able to do any work by deputy. According to this system a solicitor would address and stamp every envelope, write everything in his own handwriting, and attend every appointment he might have at Somerset House or in the Law Courts or elsewhere, as well as draw all his own deeds and interview all his own clients. The solicitor would in short do all his work personally, like a barrister who employs no "devil"; and, taking together the limits of human capacity and the amount of a solicitor's

item charges, the judge's estimate was probably not far out, making allowance for the fact that five hundred a year in 1850 was worth nearly fifteen hundred at the present day. In any case it will, I hope, be clear to the reader that the ordinary solicitor must be in a position to do a considerable amount of work through clerks and that those clerks must be properly remunerated, to say nothing of rent, stationery, and other normal expenses of any business. It may seem odd that the brokerage of a stockbroker is very rarely objected to, although that is arranged on a scale, and that the public at large seem content to pay their doctors without expecting items, and that there is very little criticism of the huge fees charged by eminent counsel or by surgeons. I suppose the reason is that the stockbroker makes his money by a number of small transactions; that if the doctor is trusted at all he is trusted to an unlimited extent; that eminent counsel are surrounded with a glamour of publicity; and that with the surgeon it is only too often a case of your money or your life.

Many solicitors in good practice send in a memorandum which roughly summarises what has been done and gives the total charge, and at the bottom of this memorandum is the inscription, "details if required." The advantage of this is that if the client recognises the merit of the work which has been done for him he can pay his bill without going through all the distressing items of interviews and correspondence as if he were presented with a huge hotel bill. It would, for instance, be tedious if a tailor's bill or an undertaker's bill specified every interview that had taken place and every letter that had been written about the business in hand. Nevertheless there are clients who are apt to forget the amount of spade work that has been involved in a long and difficult negotiation and who would perhaps pay their bills with more satisfaction if they could more vividly imagine all that had taken place. In regard to this problem a solicitor must always gauge the idiosyncrasy of his client.

The principal difficulty of the solicitor is

that the ordinary person finds it difficult to assess the value of good advice. If you offer him a motor-car at an extravagant price and he wants the car he will not worry about the price; but if he has received good advice, which may be worth a thousand times the value of any motor-car, he is quite likely to imagine afterwards that he thought of the idea himself, and in fact a wise solicitor will sometimes persuade his client to take advice by suggestion rather than exhortation. There is, after all, nothing to show for a solicitor's advice after it has been given. There is no such definite result as the verdict of a jury or a big scar on the body. For this reason advice is never properly remunerated, although the ordinary person is more inclined to pay for it if the adviser wears a wig, just as the sacred character of a clergyman depends to some extent on wearing particular clothes.

There are three kinds of costs, namely: (1) party and party costs, (2) solicitor and client costs, and (3) solicitor and own client costs. Party and party costs are the costs

which a successful litigant is awarded against his opponent, and which are far from being an indemnity, for they cover only the bare costs of litigation without allowance for any negotiation or expensive counsel. Solicitor and client costs are on a more liberal scale, but they are not usually given except where an estate is being administered or a will disputed, and the costs come out of the estate. Solicitor and own client costs are very rarely given except by consent of the parties; but such costs are certainly in the nature of an indemnity and are taxed on the same scale as a solicitor's bill is taxed by his own client. If the client fails to reduce the bill when taxed to less than one-sixth of the amount rendered he has to pay the costs of the taxation; but if he obtains more than one-sixth, then the solicitor is liable for the costs.

Although it is, perhaps, not strictly germane to my subject, it may be as well to mention one or two anomalies in the legal system as it exists to-day. Perhaps the worst anomaly is in the criminal law. If a prisoner is convicted, and has any money at all, he has to pay the

costs of the Crown out of his own pocket; whereas if the Treasury fails in the prosecution the acquitted person has no claim for costs against the Crown, although the charge may have been brought on the evidence of a mendacious or malicious policeman. Nor is there any possibility of suing the Crown for malicious prosecution. In normal times criminal charges are not recklessly launched; but there have been bad cases from time to time, and if the Treasury were liable for the costs of an unsuccessful prosecution the liability would act as a wholesome check on the responsible officials. It is noteworthy that in the early days of the Divorce Court the same system prevailed in regard to the intervention of the King's Proctor. The King's Proctor intervenes in cases of collusion or the concealment of material facts from the court. A typical case is where a poor man or woman has for years saved up the necessary cash to bring divorce proceedings and is discovered by the myrmidons of the King's Proctor to have committed some casual act of adultery ten

or fifteen years before the suit is heard. The interesting fact, however, which I want to emphasise is that when the Treasury became liable, as they did about 1880, to pay the costs of an unsuccessful intervention, interventions became far less frequent than they had been.

Much the same injustice exists in regard to a frivolous or vexatious charge made in the Divorce Court against a co-respondent or his female counterpart the intervener. The injured party in such a case should certainly have the same right of suing his or her accuser for damages on the same principle that the ordinary citizen can obtain damages for malicious prosecution or the malicious filing of a petition in bankruptcy. Unfortunately, a co-respondent or an intervener in this position may suffer from an unjust accusation for more than a year, and even when triumphantly vindicated, obtain nothing more than party and party costs. The innocent party is, therefore, under a heavy cloud of anxiety for a long time and is further put to heavy expense, whereas he or she certainly ought to obtain solicitor and own

client costs even if the law denies any claim for damages.

In conclusion, it is difficult to say how long the present system of solicitors' costs will last and how it will be modified. The Collectivists of our time thought that they would improve the situation by taking costs out of solicitors' pockets and transferring them to a new bureaucracy, as in the case of bankruptcy, land transfer, and the Public Trustee. In the result, however, the public have had to pay more, even if solicitors have been paid less, and there is a growing sentiment in favour of King Log and against King Stork. Certainly the old outcry against solicitors can scarcely be heard to-day amid the general chorus of complaints against profiteers of all kinds; and a solicitor who does his work well and also pleases his clients in other respects is not likely to meet with unjust criticism in the matter of his bills. It is beginning to dawn on the public that a solicitor whose main object is to extort money from his clients can do it far more easily by creating unnecessary work for

himself and charging for it on orthodox lines than by presenting a bill with unorthodox items and charges.

Solicitors to-day are for the most part gentlemen either by inheritance or by instinct, and although they cannot afford to be philanthropists they generally think of their clients before themselves. The inferior type of solicitor who is out for money and nothing else will soon find out, if he has any ordinary intelligence, that he can fleece his fellow-creatures far more profitably in other walks of life, and he will then cease to be a solicitor.

CHAPTER V

THE SOLICITOR ON THE STAGE

It is always interesting for the member of any profession to see himself as others see him, and there are perhaps three principal mirrors held up to any profession. The first is the Novel, the second the Play, and the third the columns of "Punch." In this particular connection the description of solicitors in novels has been exhaustively done by Mr. Christian in "Leaves of the Lower Branch," though he omits George Meredith's admirable description of the solicitor in "Richard Feverel."

I have not laboriously looked through all the pages of "Punch" from 1845 onwards; but my general recollection is that the attorney of 1850 sits in much dingier surroundings than the solicitor of later decades. Little, however, has been written about solicitors on the stage, and I was recently reminded of the subject by

the inimitable presentation of Reginald Bunthorne's solicitor in "Patience," with his grey frock-coat, white top-hat, side whiskers, and deprecatory smile.

The older type of dramatist used the attorney or solicitor as a *deus ex machina*. He was in the older type of melodrama a shabbily-dressed but benevolent old gentleman who came along at the last moment to explain that the right baby had a strawberry mark or that an inconvenient deed had been fabricated, and his characteristics have been admirably described in Mr. Jerome K. Jerome's "Stage Law." But in the region of comedy there was always a certain respect held by the dramatist for the solicitor as a practical man; though investors have been known to question this assumption in cases where joint stock companies have had a board of solicitor directors. Doctor Johnson at any rate preserved the amiable illusion. When I finally decided to become a solicitor I took the *Sortes Boswellianae*, as I have always done whenever I have had an important decision to make. By an astonishing coincidence

the book opened at the meeting between Doctor Johnson and his old friend Edwards, who had been an undergraduate with him at Pembroke and who was now a Chancery solicitor. During the conversation Doctor Johnson remarked, "You are a lawyer, Mr. Edwards. Lawyers know life practically. A bookish man should always have them to converse with." In my youth I was naturally impressed by the remark; but in middle age it has more than once occurred to me that Johnson probably knew more of life than Edwards and the Chancery solicitor more of books than Johnson.

We come then to the consideration of a solicitor as more than a machine or even a will-reading machine. In the drama of the late 'nineties he begins to attend quite respectable dinner-parties and is usually attired in an evening dress with a large buttonhole. Not only is he capable of assisting the villain but he often begins to share the sinister glamour of the villain himself. The real apotheosis of the solicitor was reached in "The Voysey

Inheritance," in which a young solicitor finds himself forced to carry on a business which though outwardly respectable is in fact insolvent owing to the misdoings of his father and partners. This situation is of course not peculiar to a solicitor's business, for a criminal trial occurred not many years ago where a young man found himself in exactly the same difficulty in carrying on an old West Country bank. Nevertheless, Mr. Granville Barker might have improved his play in two respects. First, he appears to assume that a fraudulent solicitor never keeps any accounts at all and is therefore unable to assess his liability to each client. This is not true to life, for in cases which came under my observation some years ago I noticed that the accounts were kept up to a point with meticulous regularity, and in one instance a firm which shortly afterwards became insolvent prosecuted a cashier for a small theft with the utmost rigour of the law.

Secondly, Mr. Granville Barker might have made the theme more tragic by introducing the element of a long-planned suicide. In the

wicked old days of 1900 there was more than one case of a solicitor postponing suicide until he had made certain domestic or financial arrangements, and in most cases the suicide of one partner prevented the world taking too severe a view of the other partner. But the sudden death of a partner did not protect one very eminent solicitor, whose first period of imprisonment was extremely unpleasant. Accustomed to making appointments all day, he found himself without a watch, and he was incessantly compelled to make out bills of costs for the benefit of his creditors. The punishment fitted the crime with a real dramatic aptness. Later on, however, he must have led a pleasant existence, for clients used to insist on seeing him in prison, which was surely the sincerest flattery on their part; and from being butler to the Governor of a prison he ultimately rose to the high office of librarian.

Moreover, the future dramatist might do well to deal with the earliest phase of the tragedy. For it is the old tragedy of what the Greeks called "ὕβρις." There may of

course have been cases where a solicitor came to grief through speculation pure and simple; but the original fault was in almost every case personal vanity embodying itself in the desire to make a fine show either personally or financially. Twenty years ago I was present at the public examination in bankruptcy of the above mentioned solicitor, who had achieved eminence as President of the Law Society, a Colonel in the Volunteers, and a churchwarden, when he was asked some question about his partner's conduct. With exquisite histrionic skill he raised a handkerchief to his face and said in broken tones: "Unfortunately my partner is not here to speak for himself," having previously imputed to his partner, not very justly, the whole responsibility for the disaster. To see a proud man compelled to this hypocrisy was a piece of tragedy that Aeschylus himself could not have improved, and in years to come there may arise a future Aeschylus who will depict the torments of a defaulting solicitor in the really grand style of the *Prometheus Vinctus.*

CHAPTER VI

WOMEN AS SOLICITORS

It is difficult to understand why up to now there have been female surgeons, doctors, and oculists in this country and female lawyers in many other countries, but no female lawyers in the United Kingdom. Clearly, both branches of the law offer as excellent an opening for the same type of celibate woman with exceptional talent as any other profession. If all fathers of families were legally compelled to provide a dowry for their daughters before they provided for their sons there would be some excuse for excluding women from professions in which they can either sink or swim; but at present sons usually get more. The distinction of sex always seemed to me eccentric; but perhaps that was because I was ushered into this world by a female doctor and was taken to consult a female oculist in very early youth. It is, of

course, impossible for a young mother to stand the severe strain of a busy practice; but I may perhaps quote the example of the late Mrs. Humphry Ward and Mrs. Garrett Anderson as showing that the cares of a family when past early infancy do not prevent women from achieving eminence in a learned profession. In a previous chapter I quoted a passage about the defects of female clerks; but this sort of criticism does not of course apply to the more intelligent type of woman or to a woman who is herself a principal and not a subordinate. Mr. Havelock Ellis has pointed out that our civilisation tends to assimilate the sexes, and the relations of counsel and solicitor are not unlike those of husband and wife; for the assistance of the solicitor is silent and unobtrusive, and even when victory is achieved it is the barrister who obtains all the credit for it. A wise old lady once said to me, "An honest man's the noblest work of woman"; and few men have succeeded in life, just as few counsel have succeeded in the law courts, without just the right kind of support and "instructions."

Moreover there are many departments of a solicitor's work which a woman would conduct particularly well. I refer especially to certain delicate problems and difficulties of a personal nature. I venture to predict that thirty years hence a man who is in matrimonial trouble or being sued for breach of promise or in difficulties with a mistress, will, if he is wise, prefer to set a woman to catch a woman, and not trust to the more clumsy advice of his own sex. It is sometimes supposed that a female solicitor will necessarily take up the same attitude to sexual indiscretion as Mrs. Pankhurst, which is to regard it as a crime; but personally I do not see the female solicitor of the future taking a different view from that of the ordinary man of the world to-day, except that she will always properly resent the degradation of her sex implied by any system of forced prostitution.

The truth is that the differences between the sexes have been grossly exaggerated by priests, journalists, and fools generally, and there can be no doubt that at least one per cent. of women are quite as intelligent as any man.

As I write these words the first female solicitors and barristers are starting their studies, so my predictions should be verified or contradicted within ten years from this date. Perhaps it may be well to conclude this chapter by referring my readers to a recent article about female lawyers.* The writer mentions that the first female solicitor in Ontario was a certain Miss Martin, who also became a barrister in 1895. Since then there have been seven other women who have undertaken these dual functions, which are very common; for in Ontario the barrister pure and simple is only 4 per cent., and the solicitor pure and simple only 2½ per cent. of the legal profession as a whole. There are now about twelve female lawyers in Canada and perhaps about twelve hundred in the United States of America, and the number is increasing in both countries. No charge of dishonesty has so far been brought against any female lawyer, and it is said that neither in court nor elsewhere do these women "trade on their sex."

Journal of Comparative Legislation, No. XLI., p. 200.

The only fly in the ointment appears to be that three of the twelve Canadian lawyers have married male lawyers, and of these one does not practise at all and the others only a little. The question of marriage is, of course, the principal difficulty. One would think twice before taking a female solicitor into partnership, and it will perhaps become a great advantage for an aspiring female lawyer to be plain without being repulsive. It would certainly be annoying for a male solicitor to find his partner even temporarily incapacitated by marriage either with himself or anyone else.

Again, a parent might hesitate to pay the expenses of training a daughter as a solicitor when she might decide to marry before completing her articles of clerkship. Then there are all the possible complications that might result from the courtship of a female solicitor by a male barrister or the converse. The Bar Council could not exactly prohibit any marriages of this kind without offending public policy ; yet a marriage between a solicitor and a barrister would bring about just that

relation of partnership between the professions which is so abhorrent to all the legal traditions of this country and which at present make an adoption of what is called "fusion" impossible. No doubt, however, the solution of these difficulties will do something to promote gaiety in the twentieth century.

CHAPTER VII

FUSION

In this chapter I propose to summarise the principal arguments in favour of and against amalgamating the functions of barristers and solicitors in the United Kingdom. Such an amalgamation, which is for some reason to-day spoken of as "fusion," is carried out either by giving all lawyers equal rights of audience in the courts, or by allowing the relation of commercial partnership to exist between barristers and solicitors, or by permitting all lawyers to exercise both functions simultaneously, as is usual in Canada, Australia, and the United States of America. I shall discuss the subject under three heads, and only refer to the historical side of the question by parenthesis, for that side of it has been very well covered in a big book like Pollock and Maitland's History of English Law and in

small books like Mr. Christian's Short History of Solicitors.

There are three main questions, namely :

(1) Is it better not to keep the two branches of the profession wholly distinct?

(2) Even if it is better on some grounds to destroy the distinction, are the advantages so great as to warrant scrapping all the historical and professional traditions of the Bar?

(3) Whether wider rights of audience, without prejudice to the existing distinction, would really destroy the traditions of the Bar?

I am aware how difficult it is for any professional man to discuss subjects pertaining to his profession with proper consideration for the point of view of the public. There is a natural but unconscious bias on the part of every worker, whether professional or bureaucratic, to regard the public as a body of men and women whose wishes and convenience should be postponed to the natural tastes and aptitudes of the profession or department in question. When Walter Bagehot advocated

fusion he was careful to point out that he had in mind nothing but the convenience of the public. He thought that fusion would make better attorneys and better barristers, and that the public would therefore be better served, apart from any question of expense. He also thought that the public would have better solicitors if there was as much scope for the ambition of a solicitor as of a barrister in the matter of public or political appointments.

It is common ground between all parties that there must always be a distinction between the solicitor and the skilled pleader. In England this distinction is as old as our own law. The original attorney was simply the representative of the client, often before a court to which it was difficult or impossible for the client to travel; but the skilled pleader before the more important courts was always a wholly distinct figure. The medical profession of course offers the obvious analogy, for no man will risk an important operation being performed by the family practitioner when he can obtain the skill of an expert surgeon.

Clearly, therefore, the assistance of two different men is required on litigation of really great importance, and most barristers prefer that the client should not have access to them except through the solicitor. In these days there is perhaps only one occasion when the client has direct access to the barrister, and that is in criminal cases, where legal aid is given by the court; but I have been told more than once that a barrister much prefers, whether his client is innocent or guilty, to have the assistance of a legal intermediary. As a matter of fact, the lay client enjoyed direct access to the barrister until about 1850, when the Bar Council stopped the practice. A lay client was able to put a case before counsel and take his opinion just as anyone can go to a consultant or surgeon direct; but if litigation had to be undertaken, an attorney or solicitor had to be called in and the barrister was quite at liberty to recommend any friend of his in the "lower branch." I have never seen why there should be any objection to this more elastic practice or why a solicitor should

not have a right of audience in the High Court, as he already has in the case of bankruptcy or in chambers before a judge. I need scarcely say that a solicitor can always be heard in the county courts and police courts. In practice a solicitor would always employ counsel for the more important work, just as he often does now, where he could, if he liked, take the case himself.

There is of course a very good reason for this, namely, that the barrister is an expert and a specialist. He often, for instance, confines his practice to the Probate and Divorce Division, or to the Chancery Division, or does nothing but Admiralty work, or devotes himself to Patent work. Then again, when speaking in court he has greater freedom of speech than the solicitor, for he can only be disbarred by his Benchers; whereas a solicitor is, as an officer of the court, more under the thumb of the judge. It has been said that if a solicitor had this right of audience, a Chancery barrister would necessarily claim direct access to the lay client in the matters of

conveyancing work; but I do not think there is any real danger of this, because to carry out conveyancing transactions would involve employing a whole staff of clerks for all the business side of it, and the barrister who undertook it would for all practical purposes become a solicitor and be thereby distracted from the expert side of his work.

My remarks on this head may seem to be the result of nothing but my own experience; but their truth can be strongly supported by a book entitled "The Art of Cross-Examination," by an American lawyer, Mr. Francis L. Wellman.* He points out that even in the local courts there is already "an ever increasing coterie of trial lawyers, who are devoting the principal part of their time to court practice." Leading advocates refuse all cases where clients are not already represented by competent attorneys, and the "trial lawyer" will do nothing without the assistance of what is called the "office lawyer."

It is true, of course, that in our own local

*New York City, The Macmillan Company, 1910, pp. 15–20.

courts, and even in the higher courts of sparsely populated colonies, where the same person is a barrister and solicitor, the need for specialisation is not so acutely felt as in big cities, where more money is usually at stake and where the solicitor has much more work to do in his office.

Broadly speaking, we find a very clear line of demarcation between the professions in European countries and in India and South Africa. No doubt in India and South Africa the law is more complicated by the diversity of what may be called religious jurisprudence in India, and by the co-existence of Roman-Dutch law and the common law of England in South Africa. The crucial point, however, that is debated in this country is not the distinction between two different kinds of work (for that no one challenges) but the question of partnership between the professions. For the Colonial and American system naturally results in every firm of lawyers employing a partner who is a trained advocate, and sometimes even in one firm employing another firm

where the second firm has expert knowledge of a particular branch of law.

A priori, there is a good deal to be said for this arrangement, though I much doubt if in the long run it would be less expensive for the public; for if the system were adopted in England the tendency would be to assimilate the solicitor's fee to the barrister's fee rather than cut down the barrister's fee. So far as Britain gets cheap law it is largely because the solicitor does so much work by deputy and is thought presumptuous if he attempts to institute any comparison between his remuneration and that of the barrister. Putting aside, however, the question of expense, there is certainly considerable economy of execution and saving of time. A solicitor who wishes to instruct counsel to-day has to reduce his instructions to writing and to travel often a considerable distance to the counsel's chambers; whereas under the partnership system he merely has to walk into the next room and tell his partner what to say and do unless, indeed, the litigation is of so special a character that he

has to employ the partner of another firm. It has, however, always been recognised that if such a system prevailed there would have to be the same legal education for all lawyers, and barristers would have to pass an examination of the rigid standard set by the Incorporated Law Society for solicitors instead of merely having to satisfy the standard of the Inns of Court; while, conversely, solicitors would be expected to have a more liberal knowledge of ancient law and legal history than at present.

I may say at once that I am personally opposed to the adoption of this system in the United Kingdom; but that may be because my ancestry contains more barristers than solicitors and because I am temperamentally conservative. For this reason I have asked a younger colleague, who has practised both in Canada and in this country, to give his views on the subject, and these will be found in the Appendix on Fusion. My own feeling is that the public would not get cheaper law. Solicitors are not responsible for the ridiculously high fees at present paid to the leaders at the Bar,

which also involve the junior counsel obtaining two-thirds of the leader's fee. It is the lay client who is entirely responsible for what I call the extortionate fees often charged by a well-known barrister whose clerk obtains the fees not on his legal merits but because the barrister in question has acquired great publicity in politics or in some criminal trial. The only difference in the situation would be that such a barrister would have to share his big fee with his partners, and his partners would enormously benefit by the result; but the public would not.

So far as economy of execution is concerned, I think this argument would be fully met if the lay client had direct access to the barrister before litigation began, and if the solicitor had a right of audience in the High Court. I am convinced that neither of these rights would be abused either by the solicitor or the barrister and that the change would lubricate the whole machinery of our present system. I refer particularly to the question of extending the jurisdiction of the

county courts, for when this point was discussed by the members of the Royal Commission on Divorce and Matrimonial Causes, it seemed to me that the opposition to the county court having divorce jurisdiction was largely due to the Bar being jealous of a solicitor conducting a divorce case, although except where complicated questions of domicil are concerned, a solicitor can do the work quite as well as a barrister.

I feel, however, very strongly that even if there were a balance of advantage in adopting the Colonial and American system here, this would scarcely justify destroying the professional traditions and solidarity of the Bar. It is, I think, most unfortunate that solicitors have not got these traditions and that their Inns have long ago vanished. There ought to be far more solidarity in the profession than there is, and it would exist if only solicitors had the same traditions of sodality that the Bar obtain from dining at their Inns and in the mess at Assizes. The good understanding that exists between two barristers, especially of

the same Inn, has often proved invaluable in softening the asperities of hostile solicitors and clients, and sometimes, if not always, led to a more satisfactory settlement than a judicial decision.

Then again the individual responsibility of the barrister is often more bracing, morally and intellectually, than the more obscure responsibility of a partner in a firm, for the name of a respectable firm may cover a multitude of sins. Solicitors are often not unreasonably jealous of the public appointments which are monopolised by barristers; but I think they are also envious of the solidarity which the Bar enjoys as a profession, and of all its traditions of honesty and integrity, which are largely due, in the first place, to convivial ceremonies, and in the second place, to the fact that barristers have never been exposed to the temptation of handling large sums of money entrusted to them by confiding clients.

I find a useful analogy in the matter of land transfer. I believe, for instance, in theory that the law of land and personal property

ought to be, as much as possible, assimilated. On the other hand, I cannot see how this can be done as completely in this country as it has been done in the British Colonies, where the lawyers started without any conveyancing tradition. Rightly or wrongly, I consider that the present conveyancing system, subject to such simplification as is involved by the abolition of copyholds and other odd tenures, works about as well as any system is likely to work in this country, having regard to its history. And the same process of observation leads me to suppose that the country would lose more than it gained by any radical change in the present relationship of barristers and solicitors. It is not, however, always easy to justify conclusions of this kind by reason or logic, especially when time and space are limited; and I shall not be at all surprised if the conclusions of this chapter are attributed to the Tory prejudices of middle age. For the real Radicals of our time are the old, who are often as restless as a man in the Arctic regions who fears to repose in the snow.

CHAPTER VIII

BUREAUCRACY AND THE LAW

In the last chapter I referred to the tyrannical tendency of any professional man in regard to the laity. I remember an instance of it in March, 1916, when at an inquest on the body of a woman who lived by herself the doctor told the coroner that the woman refused to be removed to an infirmary, and indignantly added that there was no power in such a case to order a person to be removed against his or her will. It never seemed to occur to the doctor that if the woman had decided that she would rather risk death in her own house than be subjected to the restraints of the infirmary she had a perfect right to do so. The doctor could not understand that saving life at all costs is not necessarily the ruling passion of the patient, though it is the professional habit of the doctor.

During the war I was scandalised to observe remarks in the pulpit from time to time in praise of war not only because it caused misery in this life but also because it made people come to church and pray. I hope that no lawyer has ever been guilty of pushing the professional bias as far as this; but of course lawyers are not immune from human weakness. I do not think, however, that they are justly accused of promoting unnecessary litigation. The fault of the lawyer is usually to be too cautious and to insist upon property being tied up and on covering all contingencies by legal expedients, though it is the unexpected that always happens.

The tyranny of the professional, however, is always tempered by the fact that the client can employ another solicitor or even have several. I have noticed that rich clients are often singularly polygamous, and I have heard that members of the Royal Family sometimes employ five or six solicitors for their business. The idea is that certain solicitors are specialists on different points, and that it is always well

to subject the work of one solicitor to the criticism of another. The drawback is that most solicitors do not like criticizing the work of another solicitor behind his back; but sometimes the result is to make the client more tolerant. This chapter, however, is concerned with the substitution of the bureaucrat for the solicitor, and I think that the public should be warned that no one can escape bureaucratic tyranny. One may go from one bureaucrat to another, and it is in fact the most conspicuous feature of bureaucracy that the citizen is never allowed to know who is responsible in the matter on which he seeks assistance; but the tyranny is no better for being anonymous. The citizen moves in a world where everybody's business is nobody's business. This is the usual result of collective control and in the region of politics has given democracy a fine appetite for despots of the President Wilson type.

An Englishman is naturally indolent, and never more so than when he is working at a fixed salary without reference to results.

Bureaucracy may succeed in Germany, because the German, however thick-headed or slow-witted, is—or used to be—morbidly industrious. In a British Government Office most of the real work is done by about twenty per cent. of the officials and the others do as little as they reasonably can. Even the energetic official finds himself hopelessly baulked by his colleagues.

Collectivism, which is nothing more than a philosophy of the State organised for war, is now out of date on the Continent, but for that very reason exerts considerable influence in this country, where for the last twenty years it has produced the most deplorable results. The essential notion of the Collectivist is that individuals should be at every point related to the State but not to each other. Thus the child is a citizen and its parents do not count except as citizens. Similarly, such a body as the Ministry of Health wishes to destroy from the start the confidential relations between doctor and patient, and a considerable effort was made in the early stages of the Insurance Act to

prevent the patient having any choice of a doctor. It is the object of modern Collectivism to transform all doctors into civil servants so as to destroy any individual responsibility to the patient, and this is precisely what they will want to do in regard to the solicitor and client.

It is true that the solicitor's remuneration is rigidly fixed by State control and that his responsibility to his client is to some extent limited by his being what is called an officer of the court. For instance, the court does not allow him to enter into the same genial arrangements for collusive divorce that are permissible to men in wigs. I remember a divorce case where the husband's first petition against the wife had been dismissed after a fierce contest before a jury. He then filed a second petition, but before serving it his solicitors wrote to the wife's solicitors pointing out the heavy expense which had been incurred by the failure of the first petition and that the expense of a second petition, for which he had better evidence, would clearly reduce the provision that he

would be in a position to make for her in the future. The wife's solicitors read this letter in court to the then President, who expressed great indignation and summoned the solicitor to explain this disgraceful attempt at collusion. The solicitor, however, merely replied that the letter had been drafted for him by Mr. Justice Bargrave Deane just before he had been elevated to the Bench; on which the President serenely remarked that he was glad to have the letter so satisfactorily explained.

The solicitor has always given offence to the Collectivist mind because of his bent for individual enterprise. Solicitors have been known to have a regrettable tendency to what is called speculative litigation on behalf of a poor client, and any activity with an element of enterprise in it is denounced as speculative by the Collectivist. Solicitors have also been known to encourage a petition of right to His Majesty the King, and this attempt to approach the King in regard to grievances created by bureaucracy is naturally a cause of grave offence to the Mandarin. The obvious retort of the

bureaucrat is either to turn a solicitor into a civil servant or to deprive him of his costs and employ officials instead.

Up to now the latter expedient has been more popular. It was first started in bankruptcy, and the result has been that no bankruptcy petition can now be filed without spending at least £25. Then came the machinery of land transfer. It was at first voluntary; but not on that account popular. The truth is that the conveyancing legislation of the early 'eighties greatly simplified land transfer, and the reforms that were then brought about should have been completed by setting up in every county a Deed Registry of the kind that has worked so well in Middlesex and Yorkshire. Lord Halsbury, however, saw fit in 1897 to set up a most costly and unsatisfactory Land Registry in the County of London, and made it compulsory in that county. Every County Council had power to make the same system compulsory in its own county; but the fact that no County Council ever did so acutely vexed the bureaucratic mind, with the result

that a Royal Commission was appointed in 1910 to report on the whole question and in 1911 condemned the system—the failure of which up to then had always been attributed to the natural depravity of solicitors. One would imagine that in any sane country the first step after this would be the abolition of Lord Halsbury's Land Registry; but the mind of the Mandarin works very differently, for he now proposes that the Government should be able to extend the system by compulsion throughout the country. This may teach a severe lesson to the County Councils for not compelling the citizen to adopt a system which causes him unnecessary expense and inconvenience, and it is a very good example of what the Mandarin considers real statesmanship.

The next step in bureaucratic progress was the appointment of a Public Trustee by the Public Trustee Act of 1906. I have already mentioned that this appointment was largely due to the serious epidemic of solicitors' frauds in 1900. Misappropriation by a solicitor-

trustee was bad enough for the beneficiary, but it also caused great hardship to the co-trustees of the solicitor-trustee. It was of course natural that in a country where trustees are not paid a solicitor-trustee should be appointed, for he was always a man of business and generally took a more active interest in the trust than his co-trustees. I venture also to think that a great deal of business is very efficiently transacted by solicitor-trustees to-day and that the need for the Public Trustee would never have been felt so much as it was but for the above-mentioned frauds. There were, however, other reasons for the creation of this department. Before 1906 it was impossible for a reversioner to obtain any sort of account from the trustees of his fund, and the Act of 1906 has provided an excellent machinery for this purpose. Then again the lower middle class were even worse off than the well-to-do, for the sort of trustee they were able to obtain for their property was never rich enough to make any kind of restitution for misappropriation. The Public Trustee Act was strongly

supported on this ground by many men who were more critical on other grounds. Personally I was always in favour of the Act, though the profession as a whole was at one time hostile and suspicious.

There can, however, be no harm in indicating certain obvious and possibly inherent defects in the Department. In the first place, what is called the State Guarantee is not so comprehensive as it sounds, for it only covers cases where the private trustee would be liable to his beneficiaries and not, for example, cases where the Public Trustee is victimised by the fraud of his agent.

In the second place, it is impossible for the Public Trustee, whose office comprises many departments, to attend to business as promptly as an individual. There is some overlapping of correspondence, which sometimes swells the solicitor's bill of costs, and it is not always so easy as it should be to find the man behind the gun.

In the third place, it is impossible for the Public Trustee to commit what I may call a

proper breach of trust for the benefit of his beneficiaries. He is perhaps fortunate in this respect, for beneficiaries are rarely grateful for the good results of any such breach and always very critical if the results are unsatisfactory. Nevertheless, there are certain cases where a judicious breach of trust may be most beneficial in the long run, and the trustee will not come to harm if he is dealing with really honest beneficiaries.

In the fourth place, I think there is some danger of the Public Trustee, as a Government servant, having too much power in the matter of investment. Army bankers sometimes have a disconcerting habit of informing their customers that their duty to the State ranks before their duty to their customers, and in the same way the Public Trustee might at some future date inform his beneficiaries that the Government of the day insisted on his investments being, at any rate for the moment, directed, for example, to raise the price of Consols.

Mr. Samuel Garrett has recently criticised

the Public Trustee in regard to the question of enlarging his staff. Mr. Garrett argues that all work outside the department should go to outside solicitors, surveyors, or accountants, and that the internal staff should not be enlarged so as to increase departmental expenses. The answer to that, however, is that if the public choose to pay a higher price for the State Guarantee it is their own affair; and that if the Public Trustee is to rely almost entirely upon outside assistance he should then be able to pick and choose what assistance he shall have, instead of employing, as he does now, the solicitor chosen for him by the beneficiary.

Personally I consider that the Public Trustee's Department is a case where bureaucracy is shown rather to advantage than to disadvantage, and the whole history of the Department up to now is much more satisfactory from the public point of view than the history of other public departments. Much as I dislike Collectivism, I have always tried to keep an open mind in regard to departmental activity, as the reader will see for

himself in the next chapter on a Ministry of Justice. In the days of my youth I even went so far as to suggest the appointment of an Official Co-Respondent; but nowadays there seems some hope of reforming the marriage laws without this bureaucratic assistance.

The last existing Department with which I propose to deal is the Department which was set up some years ago for dealing with Poor Persons' cases, and it originated to a great extent with the agitation for Divorce Law Reform. It is characteristic of this country that the system never attacked the root of the evil it was intended to remedy, namely, the absence of local justice for the poor in the matter of divorce. It is obviously ridiculous to expect a poor person to bring witnesses to a High Court in London from Yorkshire or Cornwall; but that, also obviously, is necessary so long as divorce jurisdiction is denied to local courts of any kind. The Divorce and Matrimonial Causes Commission recommended the hearing of divorce suits in certain selected towns, and this might have been carried out

by a stroke of the pen if the Lord Chancellor of the day had been interested in the subject; but, as I shall show in the next chapter, a Lord Chancellor usually has too many irons in the fire.

The rule of the Poor Persons Department is that no one is entitled to assistance who has more than £50 or makes more than £2 a week. This limit is much too low, especially in these days when £2 a week is more like £1 a week. Also one must never forget that the lower middle class suffer hardships that the poor do not, both in the matter of health and justice; but much more in regard to justice. A man with an income of £200 a year can go to a hospital though he cannot afford a nursing home; but in the matter of law costs he is at a hopeless disadvantage, and in the legal profession there ought to be a scale of costs adapted to cases of this kind, just as there ought also to be facilities corresponding to hospital treatment for the poor. As usual, Scotland sets us a very good example in this respect; but we do not take the trouble to

imitate it, and it is not at all to the credit of English lawyers that they have so far been quite content with the present state of things.

What amount of care and consideration has been given by lawyers to the formation and working of the Poor Persons Department I find it difficult to estimate; but I notice that whenever a system of this sort fails it is always solicitors who are blamed, and I consider that solicitors, and particularly the Incorporated Law Society, ought therefore to take far more pains than they do to vindicate the honour of the profession and to make every possible effort to bring justice within the reach of anyone with an income of less than £300 a year.

I ventured to quote the criticisms of Sir Nevill Geary on what he calls "free" divorce for the poor, and I will only add that so long as departments conduct litigation in this way there is no fear of the rich man ever allowing his solicitor to be displaced by any Government Department.

The Poor Persons Department was set

up in 1914, before the war, as an official branch of the Law Courts. The two necessary qualifications for the assistance of the Department were, as was reasonable, that the applicant should be necessitous, which was defined as not worth £50 (clothes, tools, and the subject of the litigation excepted), and that he or she should have a good cause of action or a good defence to an action. Similar conditions are laid down for 'l'assistance judiciaire,' introduced in 1851 in France and most other countries which have adopted the Code Napoleon; but with this material difference, that there the State provides the cost of litigation, while here the Poor Person has to pay the solicitor assigned him a fee of £10 or more.

"The work of the Poor Persons Department since its inception in 1914 can now be surveyed in the light of the report thereon of a committee, presided over by Mr. Justice P. O. Lawrence, published this month as a White Paper (Cmd. 430), 1919, and of a pamphlet by Mr. Adrian Short, the Secretary of the Poor

Persons Department, on the Procedure and Rules of the Department.

"Divorce is nine-tenths of the work of the Department. In 1918, according to the Committee's Report, there were 4000 applications in matrimonial cases, and 300 in non-matrimonial cases. The explanation is easy. Poor Persons' non-matrimonial causes of action usually come within the County Court jurisdiction, and the Poor Persons Department does not apply to County Court actions which can reasonably be conducted by the parties in person. Divorce cases must come before the High Court, and must be proved by evidence of witnesses in open court.

"Out of the 4000 applicants to the Department for divorce half made good their title of indigence and meritorious cause of action. Then a barrister and solicitor are assigned to the applicant to conduct the action. The Department works gratuitously, there are no court fees; the barrister works gratuitously. Theoretically, and on principle, once the applicant has made good his double qualification,

his cause should proceed automatically without cost and without delay.'

"In actual practice, the assigned solicitor at once demands a lump sum, cash down in advance of at least £10 minimum, on account of out-of-pocket expenses. This he is legally entitled to demand. Unless this is paid down, the solicitor is under no obligation to go further, and can drop proceedings, and, in fact, out of 2000 applications granted, less than half actually materialised into petitions filed.

"Besides such payment down in advance the solicitor can and does sometimes say subsequently to the Poor Person that the money paid down has been expended, and that unless a further sum is found, the case cannot go on. The result hereof is that out of the applications granted, less than a quarter come to trial. The exact figures for 1918 are applications granted, 2216; petitions, 1014; cases heard, 486; cases successful, 471. The report finds that the reason for the discrepancy between applications granted and petitions entered and cases tried, is that the Poor Persons cannot find the sum

required for 'out-of-pocket expenses' to start or proceed with their cases.

"It appears essentially incongruous that the Poor Person should first have to prove before the department that he is indigent—and then be called upon to pay down £10 (or more).

"In common fairness to the solicitor, it must be admitted that the £10 for actual cash disbursements plus office expenses is not more than an equivalent. A solicitor has to keep an office open with one or more clerks. To conduct a divorce the solicitor must send out a trained clerk (1) several times to the registry to file documents; (2) to serve the respondent and co-respondent; (3) to attend the counsel at his chambers and at the hearing in court, when the clerk will often have to give at least formal evidence, and (4) to interview witnesses all over or even outside London, and take down their statements. While the clerk is so sent out of the office, other paying clients' business has to wait, or further clerkage must be employed. If, as is proposed by the report, solicitors are to be restricted to actual cash

disbursements, £5, and not allowed office expenses, the probable result will be that solicitors will not undertake the work; or if so, it will be scamped and neglected.

"Still, when the figures show that out of the applications granted as fulfilling the double qualifications, three-quarters never come to trial for lack of means the practical result is that the gates of justice are banged, barred, and bolted in the face of the men (and more particularly the women) whom the Department was instituted to help, and also to stultify the Department so that its trouble and cost is mainly wasted energy.

"The recommendations of the report are only palliatives; that the office expenses of the solicitor should be disallowed, and that the deposit of £5 paid to the Department should be required from the applicant, which should be an inclusive fee, and that the Department should pay the solicitor thereout, and that the solicitor should not receive any money from the applicant. The report also imposes an income test on the applicant: that he or

she should not be earning more than £2 a week.

"If the system is not to be abolished as a costly sham, machinery should be provided whereby once the Poor Person has justified his claim to be helped as such, and shown that he has good a cause of action, his case should proceed to trial automatically. . . .

"The obvious remedy is that the Department should undertake the solicitorial work referred to, as they could; just in the same way as the police investigate and bring to trial a robbery. Collusion will so be eliminated and delay minimised. Further, if the conduct of a divorce case against a woman were entrusted to the Department, it would be feasible to combine with the service on her, a clear official intimation of how she could defend or countercharge, and set up a claim to custody of children, and maintenance, even if not blameless."

CHAPTER IX

A MINISTRY OF JUSTICE AND THE POOR

MR. SAMUEL GARRETT'S presidential address to the Incorporated Law Society on this subject roused considerable interest inside and outside both branches of the legal profession. For obvious reasons it seemed to some critics like Lord Parmoor to savour of an increase in bureaucracy, though solicitors are inveterate enemies to bureaucracy. Being as much under the official thumb as any taxi-driver, having experienced unfortunate experiments like that of the Land Transfer Act, and being by professional routine the watchdogs of private property, solicitors are not noted for any Collectivist enthusiasm; and if any considerable body of them approve of Mr. Garrett's scheme it looks as if the scheme were badly needed.

The first and least discussed part of the address dealt with legal education and the necessity for a National School of Law for both solicitors and barristers to be subsidised out of the heavy taxation of solicitors. This would lead up to a better unification of the profession than now exists, and this I have already discussed in the chapter on Fusion.

But the main part of Mr. Garrett's address concerned the appointment of a Minister of Justice, which was suggested in the Law Magazine in 1856. That epoch scarcely suggests enthusiasm for unnecessary officials, nor was Lord Brougham, who commended the proposal, conspicuously zealous for bureaucracy.

Mr. Garrett's suggestion is that this Minister would be a "business manager of legal affairs." He "would be divorced from judicial functions but charged with the duty of seeing that they were properly fulfilled and provided with machinery fitted for their needs." He would relieve the Lord Chancellor, the Lord Chief Justice, the President of the Probate Division,

and the Master of the Rolls of "irksome duties involved in their administrative patronage," and various other officials of duties which are done under conditions which lead to "overlapping, extravagance, and inefficiency." These duties would be concentrated in the hands of a single Minister with a seat in the House of Commons and responsible to Parliament. The co-ordination of all this work in the hands of one Minister would save a considerable amount of money from the start; and it is to be presumed that he would have been a practising lawyer of sufficient experience in the subject matter with which he would have to deal.

Mr. Garrett lays less stress on the aspect of his scheme which mainly appealed to Lord Brougham in 1856. Lord Brougham wrote in regard to it: "There would at all times be a department charged with the duty of watching how our laws work in each particular, and propounding means for curing the proved flaws in the system and quickening the action of its healthy parts." There is unfortunately in this

country no such department. For nearly one hundred years the Law Society has done admirable work of this kind which is apparently quite unknown to the Fabian experts who write about the doings of lawyers. But the members of such a body are very busy men and the Society does not enjoy the prestige which it deserves with the public at large.

Legal reforms cannot indeed be carried out without the aid of some central expert body. They are of necessity difficult for the layman to understand; and for this very reason it is not easy to get support from any great mass of public opinion. Much unsolicited support comes of course from cranks. I can remember a gentleman who thought himself an enthusiast for reforming the marriage laws, twice in the last fourteen years sending me a draft bill for enabling a man to divorce any wife who should have attained forty-five years of age, which he thought would arrest the decline of the Birth Rate!

A Royal Commission can sit till all its members are senile or dead without the least

practical notice being taken of their recommendations. The average member of the House of Commons is much too busy with his own "career" to display interest in any really tangled problem even if he were intellectually capable of grasping it. These conditions may also prevail in other countries. But in other countries there is a Ministry of Justice and the apparent consequence is that their legislation (as in France or Germany) is not a medley of absurd anomalies, but is worthy of a modern civilised country. Moreover their legal procedure is cheap and efficient.

This is not due to their having codes. A code cannot do away with the difficulty of forcing facts into the strait-waistcoat of legal definition. There is always a struggle between the issue and the process. The lawyer wants to simplify the facts as much as the layman wants to simplify the law. But there are badly needed reforms which could be carried out by a Ministry of Justice as, for example, to produce a constant supply of statutes like the Partnership Act, 1890, which

summarise and boil down a multitude of decided cases.

The Commercial Court represents a gallant attempt to specialise justice where the subject matter is complicated; but as Mr. Garrett remarked, it has not achieved the success which was hoped for it. Yet special courts do succeed in other spheres, as, for instance, Courts Martial or the Law Society's own Disciplinary Committee. Courts Martial seldom go wrong except when misdirected by an amateur Judge Advocate. In any case the principle could be advantageously extended by any Minister of Justice.

Mr. Garrett summarises his case as follows:

"The case which I submit to you is that Law Reform hangs fire for want of an officer of State armed with the power of conducting the necessary enquiries and investigations, and supplying the necessary driving force to initiate and prepare the requisite legislative measures and to pass them through Parliament, and with strength to overcome the *vis inertiæ* of a

preoccupied and ill-informed public and the active opposition of vested interests. Without such an officer the cause of reform is hopeless.

"The first work of a Minister of Justice would be constructive, and would deal with the subjects on which I have touched above. This work would require time for investigation and thought. It is new work which has not hitherto been done at all. But beyond this work there is other work which has hitherto been performed by various departments, but which would naturally be collected in the hands of a Minister of Justice when such a functionary comes into existence. Such are (i) the patronage of the legal departments now in the hands of the Lord Chancellor, of the Lord Chief Justice, of the President of the Probate, Divorce and Admiralty Division, and of the Master of the Rolls (on this subject see the Sixth Report of the Civil Service Commissioners). Whether the judicial patronage of the High Court should be in his hands would be a matter for consideration, but he should certainly relieve the Judges above

mentioned of the irksome duties involved in their administrative patronage; (ii) the judicial patronage of the Home Secretary and of the Duchy of Lancaster—in the appointment of Stipendiary Magistrates, Recorders, and Judges and Officers of inferior and local Courts; (iii) the dispensation of the prerogative of mercy and the administration of prisons now in the hands of the Home Office; (iv) the functions of the Board of Trade with regard to bankruptcy and companies winding up; (v) many, if not all, the legal duties of the Treasury. The Public Prosecutor's Office should be a department of the Ministry of Justice. There are no doubt many other functions now spread among different departments which it would be found convenient and economical to commit to the Minister of Justice. The gain to the public from having these duties concentrated in one office, in the hands of a single Minister with a seat in the House of Commons and responsible to Parliament, would be immense. The present system leads inevitably to over-lapping, extravagance and inefficiency. The functions

referred to are mostly excrescences on the departments to which they are now attached, assigned to those departments for no particular reason except that the office to which they would naturally be assigned, viz., the Ministry of Justice, does not exist. The amount of inter-departmental correspondence and consequent delay and expense involved in the present state of affairs must be enormous. A properly organised Ministry of Justice presided over by an experienced administrator would pay its way in the first twelve months of its existence.

"There would also be a Statistical Department of the Ministry which would collect and publish returns and information as to the working of the Legal Machine, and a Department connected with foreign law to give information and assistance as to the enforcement of British judgments in foreign countries and also possibly as to the enforcement of foreign judgments in this country.

"The Ministry would organise the legal Departments, distribute and assign its duties

to each Department, see that each Department is adequately but not excessively staffed. Its representative would be constantly at the Courts, watching the machine at work, noting defects, and suggesting improvements and economies.

"In short, the Ministry of Justice would focus and co-ordinate and systematise the whole legal business of the country—a work which at present is no one's duty and which is therefore not done."

There are many other problems a Minister could tackle, as, for instance, numerous problems of international law turning on the conflicts between the continental test of nationality and the British test of domicil, which lead to the tangles of the *renvoi*. Again, there is the problem of assimilating the laws which regulate real and personal property and the whole question of publicity in legal procedure.

Above all there is the burning question of justice to the poor. It is astonishing that a poor man should not be able to obtain justice

at least as easily as he can obtain medical or surgical treatment. He may have Counsel allotted to him on a criminal charge; but in civil matters he ought to be much better looked after; and the so-called facilities for divorce are a mockery for reasons already explained. These are all matters which a Minister of Justice could very well tackle and if he did not he could be asked in the House of Commons why he had neglected his duty. No Lord Chancellor is brought to book on these questions owing to the complicated machinery which now exists.

There is no doubt that all professions are much improved by amateur criticism; and although clear thinking is conspicuously absent outside legal circles in Great Britain, a Ministry of Justice would respond to, and be in touch with, much criticism which deserves attention from lawyers and gets very little from any one. The Bar is highly conservative by temperament and is far from conspicuous in the House of Commons for any zeal in regard to legal reforms. Their energies are usually devoted

to concocting new measures for the satisfaction of the always active Collectivist, whose principal ambition is to substitute bureaucrats for lawyers. On the other hand solicitors are too much burdened by professional work and their opinion carries little weight, though they know better than any one else where the shoe pinches.

The net result is a growing rift between lawyers and the rest of the community which is bound to end in disaster if it is allowed to widen. A Ministry of Justice could and would do much to create a valuable harmony which is essential to public welfare. In all countries the governing classes are to-day on their trial. Soldiers in trenches have naturally meditated on the art of government in the intervals of being shelled; and in Eastern Europe such meditation has led to the abolition of law and lawyers as well as politicians. Politicians who draw large sums of public money for services rendered will now be expected to show that those services are worth paying for; and if the rulers of a community cannot even achieve justice for its citizens,

whether rich or poor, they will have to make way for other men with a higher sense of public duty.

I want again to emphasise the importance of justice for the poor. Lawyers are quite as much to blame as politicians for acquiescing in the common attitude that the poor are to be given doles of every possible kind but never justice as a matter of right. I can well remember the derision excited fifteen years ago by the suggestion that the poor ought to have cheap divorce. The idea that the family circle of a poor man needed any legal aid seemed as odd as that a poor man should have a motor-car or a city dinner. In France where equality is real and not a sham, the poor man has for a hundred years enjoyed efficient justice at the hands of the State, and it is a very bad tradition in this country that law should be nothing but a luxury. It is, of course, true that the poor might have petty quarrels and undesirable litigation; but then so do the rich. The poor man's lawyers have done admirable work in the poorer districts

of London; but their work is a drop in the ocean compared with what ought to be done.

I may be wrong, but I am convinced that this deprivation of justice is at the root of much popular discontent, even though the people may not be conscious of it. If a poor man feels either that he has no tribunal to adjust his disputes and vindicate his claims, or that any existing tribunal is bound to be prejudiced against him, it is a great disaster to the community. When the late Lord Justice Farwell delivered his famous judgment in the Taff Vale Railway case he was only deciding a legal point on the question of principle, and he decided, no doubt correctly, that under the law as it then stood a trade union could be sued. But the law as it stood was based on the fact that in the early days of trade union legislation the union was not allowed a legal existence, and no doubt this handed down a tradition of injustice in the minds of labour which found expression in the feeling that a judge who was a gentleman

could not possibly do justice as between the employer and wage-earner. It is by some such process that the tyranny and injustice of trade-unions themselves have come to birth; but I do not think this misfortune need have occurred but for the cynical indifference displayed in legal and political circles to the claims of the poor man to justice.

I remember hearing a French lawyer give evidence before the Royal Commission on Divorce and Matrimonial Causes. When asked about divorce for the poor he said, "If anything, there is too much divorce among the rich; but the poor man needs divorce much more than the rich man, because he has no servants." Most of the lawyers in the room were startled by this elementary piece of commonsense, just as lawyers are often startled by the proposition that a poor man's property is important to him because he has so little of it; and there is to-day no class in the community which suffers more from the Collectivist pose of the rich than the small

property-owner, who is frequently a widow. The small property-owner is always sacrificed with great pomp and state whenever the plutocrat feels that there is any danger of new taxation.

CHAPTER X

PARTNERSHIPS

THE relation of partnership cannot exist between barristers but does exist between solicitors, as it also does in any other kind of business. The partnership relation is often as exacting as marriage, even though it is only as a rule for a term of years or even annual. But the partnership of solicitors is perhaps more difficult than the ordinary partnership because a solicitor's activities are so multifarious and a solicitor's work depends much more on his personality than, for instance, the art of buying and selling jute. Some partnerships are more or less a matter of inheritance and may be compared to a *mariage de convenance*, while other partnerships, arising from the free will of the parties, are more romantic.

In a solicitor's office there are endless possibilities of dispute in regard to clients,

clerks, and personal habits. One partner may think that one client is his property and may be quite annoyed if in his absence the client exhibits any enthusiasm in regard to the activities of the other partner. Similarly, one partner may be inclined to consider particular clerks, or in fact all of them, as his own servants in priority to the claims of other partners. In regard to personal habits, considerable difference of opinion may arise on the question of smoking. I remember a battle that raged for at least two years between two partners on the question of pipes and cigars. A. smoked a pipe and B. smoked cigars, and A. maintained that whereas pipe-smoking soothed the nerves of a well-regulated solicitor and made a solicitor's office a thing of beauty and a joy for ever, cigar-smoking on the other hand degraded the smoker and the staff and created a moral atmosphere which could only lead to ruin and destruction. One can imagine a similar complication on the question of intoxicating liquor; but the time has gone by when a solicitor would keep a bottle of

port handy for the delectation of his clients and himself after the admirable manner of Meredith's Mr. Thompson.

Perhaps the most important thing for partners to remember is that partners, like spouses, should not see too much of each other. I once knew a man who was almost inconsolable through the loss of his wife, although they lived in separate houses and were only together for a short time in the course of each year. He told me that his marriage had been one of ideal happiness, and that he made the arrangement because in his youth he noticed how much happier his parents were than most married couples. His father had been a sailor; but the fraction of the year that he spent with his wife was always quite a little honeymoon.

It would perhaps be difficult to carry out such a scheme in the case of partners; but certainly no partner can be more disagreeable than the sort of inquisitive, garrulous man who is always coming into his partner's room to see what he is doing, and it ought to be recognised

between partners that each of them must have a free hand.

I fear that partnership has even more possibilities of disharmony than marriage, and my reason for thinking so is that I have hardly ever attended a public dinner without my neighbour unfolding his candid opinion of his partner, if he had one, sooner or later in the course of the evening; and the grievances were usually more emotional than financial. The clothes, manners, and customs of the partner seemed to excite more dissatisfaction than the graver financial problems connected with the partnership; from which I infer that partners frequently get on each other's nerves to an unbearable extent.

Divorce law reformers sometimes seem to imagine that marriage will be one long, sweet song if only one spouse can get rid of the other by giving to the other three years' notice. I fear, however, that this will not entirely solve the emotional problems of marriage any more than it solves the emotional problems of partnership. Aristotle pointed out many years

ago that friendship was founded on a pleasing appearance, common interest, and a mutual appreciation of good qualities. To some extent this applies to partnership, and in addition to that partners have what may be considered a parental interest in joint ventures or enterprises which may often keep a partnership together just as children support the institution of marriage.

I have thought it as well to mention the unstable equilibrium of partnership in view of the enthusiasm displayed by certain advocates of fusion who want to see barristers and solicitors in partnership; and it may also be well for the laity to know that tact should be displayed in the consultation of different partners. Partners are only human, and to that extent are, in Lord Bowen's words, apt to be perhaps unduly conscious of each other's shortcomings.

CHAPTER XI

SOLICITORS AND FUNERALS

THE final examination for solicitors includes more subjects to-day than it used to do; for instance, it very properly includes an examination in book-keeping. If, however, there is one other subject which ought to be included it is the subject of funerals, and certain rules ought to be observed. If, for instance, the solicitor is invited to a funeral it is judicious for him not to charge his railway fare in the probate bill; and, on the other hand, a solicitor is not pleased, if he is not also a friend, to find that he has been asked to fill up a mourning coach when the will is going to be proved by another solicitor. A solicitor, however, should always know how to order a funeral or a cremation, and should be well acquainted with the prices of coffins and their contents. In order to carry out the last wishes of a client I once

had to engineer the transport of a dead body from the Channel Islands to Southampton for the purpose of being cremated, and it was not an easy job when the English Channel was infested with U-boats. However, owing to the efficiency of the Cremation Society the operation was carried out without a hitch, and the Society was even able to obtain the services of a Catholic priest to read the Catholic funeral service, in spite of all Catholic prejudices against the practice of cremation. No solicitor should forget that a special coffin is necessary for the purposes of cremation and that any corpse that is to be cremated has the advantage of two medical certificates. Either the deceased or the executors must express a wish for cremation; but it is curious that if the executors disagree with the wishes of the deceased they can have their own way, as the law does not permit a man any property in his own body when dead.

A solicitor should always be prepared to read the will, for there is a kind of tradition in some circles that a will is hardly legal unless it

is read aloud after the funeral. He must also be prepared to compose any family differences that may arise after the will is read. A solicitor is oddly safeguarded against the beneficiaries of a will even supposing he has made a mistake. Thus, if he was instructed to record a legacy of a thousand pounds to John Jones, and by mistake put down a hundred pounds, John Jones has no remedy against the solicitor.

Funerals, however, are becoming simpler and wills shorter than they used to be. A funeral used to be a very complicated and expensive affair, as everyone who came was presented with a prayer-book, a pair of gloves, a hatband, and in the old days, instead of a hatband a crape streamer or "scarf" which went round the hat and hung down behind. My grandmother, who had a large family, found streamers very useful for making mourning frocks for her children, and no doubt they could be put to other uses also. In these days, however, the mourner gets nothing at all, and such is the rapidity of modern life and death

that motor hearses are constantly breaking the speed limit. An enterprising solicitor, however, should be prepared to undertake a funeral anywhere, and for the benefit of other solicitors I may perhaps be allowed to recall my experiences in France nearly twenty years ago.

A client of mine, an elderly spinster, died in a cheap hotel in Paris, and as her only surviving relation was too old to undertake the journey, I was despatched with the parish clergyman and his wife and daughter, who, although in a state of decent melancholy, were at the same time interested in seeing Paris. On arrival we found the body in exactly the same position as when death occurred, and the authorities had put seals on her personal possessions; although the deceased lady's watch was never found.

For various reasons we decided to bury the lady in a Paris cemetery; and then the trouble began. The State undertakes burial in France, and ordains nine different classes of funerals on a scale suitable to the rank and fortune of the deceased. After reading a vast

quantity of regulations, I came to the conclusion that the fifth class, with a hearse and two mourning coaches, was the proper class to choose. I then had to fill up an interminable series of documents about the deceased's family history and my own.

I flatter myself that there were only two serious hitches in the proceedings. The first was in regard to the funeral ceremony itself. Unfortunately, the clergyman's wife had a predilection for incense, and knowing that incense had been used in Ely Cathedral up to 1750, I did not see why she should not have it if she wanted it. This, however, excited violent indignation in the verger, who was present at the Embassy Church, and he nearly created what in ecclesiastical circles is known as a brawl. It took some time to soothe him before the funeral service could be carried out.

In the second place, I seriously offended the driver of the coach which conveyed us to the cemetery and back. The hotel-keeper had told me that we could take the coach wherever we liked so long as we did not come near the

hotel, where the death had been carefully concealed. Consequently I considered myself at liberty to show my friends some of the sights of Paris, with which I was more familiar than they. The clergyman's daughter had seemed a little distressed by the fact that she had never seen a dead body, and particularly that of the lady who had been buried. So I benevolently directed the coach to go to the Morgue, which was in those days quite a popular show. At this stage I did not notice any discontent on the part of the coachman, who may have supposed that we were a kind of burying party looking out for deceased Englishmen and women. As we were all getting hungry I gave him the name of a restaurant in the Latin Quarter, and on arrival asked him if he would wait half an hour. But by this time the outraged dignity of a professional funeral-coachman, suitably arrayed in deep mourning and a streamer, asserted itself, with a wealth of gesticulation which attracted a large crowd on the pavement and in the road. He asserted that as a professional coachman in the service of the French

Republic he considered it necessary to maintain the dignity of that Republic by refusing to allow himself and the State coach to be used for the purposes of sightseeing. He finally ended an impressive oration with the searching but rhetorical question whether, after the meal, we proposed that he should drive us to the *Moulin Rouge*?

I ultimately succeeded in soothing this gentleman and dispersing the crowd, who seemed rather too sympathetic to let us enjoy our meal in peace. On returning to the hotel it became necessary to effect a settlement with the hotel-proprietor, who required an indemnity of no less than a hundred pounds in respect of a lady who had died suddenly and quietly of heart failure, and whose life would probably have been saved if the servants, who had presumably taken her watch, had not left her alone for at least thirty-six hours while she was alive. I will not repeat the proprietor's arguments in detail, but may mention that he began by stating that his nerves had so entirely broken down owing to the death that he had not been able

to sleep in the hotel while the dead body was there. He was unable to share the British phlegm which had enabled four English persons to sleep in the rooms with which he had accommodated us. However, I may cut a long story short by saying that he ultimately accepted twelve pounds in full satisfaction of his claim after being told that if he disputed the amount the question should be referred to a *juge de paix*. For a foreigner could always obtain justice in Paris, though very rarely in Berlin, before 1914.

I fear that this anecdote may seem a little tedious; but I think it will illustrate the way in which a solicitor must be prepared at a moment's notice to transact business with which he may be wholly unfamiliar, and to bear in mind how easy it is to make mistakes in ceremony and convention when it is very important to make no mistake at all. In this connection I may perhaps pay a tribute to undertakers, who, in my experience, display an exceptional amount of tact and consideration. A mourner is an unaccountable person, for

grief, more often than not, takes the form of acute irritability, and it is the undertaker's business to soothe him. I have never in my life seen an undertaker smile, even when pardonably imbibing strong liquors after the funeral is over. I presume, however, that undertakers enjoy some method of laughing inside which is a mystery of the profession. It is certainly about the most disagreeable profession in the country, except perhaps that of a public executioner, and I think that the admirable way in which an undertaker carries out his duties deserves more recognition than he generally gets. And I am sure that in a recent lawsuit in which an undertaker failed by reason of what was called breach of contract, it was the loser who enlisted legal sympathy.

CHAPTER XII

THE VOCATION OF A SOLICITOR

WHATEVER else may be said about a solicitor's work there can be no question of its importance. It may be said that a doctor's work is more important because if he neglects it his patient will suffer or die; but if we are to rely on medical opinion as given either in the consulting room or in the witness box, no suffering or loss of life ever results from medical or surgical activity. On the other hand, a man who loses his reputation, his property, his earning power, or his domestic happiness, will suffer pain quite as acute as the physical pain of disease. By composing a dispute, defeating a blackmailer, or saving a man's fortune in the nick of time a solicitor may do more for his client than any doctor can do or will do, especially if the client happens to die suddenly or of an incurable disease.

On this point I think perhaps a word may be said in regard to the advice given by relations and friends, which is almost invariably bad. A man will always find that any relation, especially his parent or his child, or his brother or sister, does not approach his problems in a detached spirit, but always with preconceived ideas. The tyranny that a parent will attempt to exercise in such matters as marriage or the choice of a profession will as a rule be skilfully disguised in the form of what is called good advice; but it is certainly not disinterested. A father will always want his daughter to marry a rich man and will often put every obstacle in the way of a divorce even when the whole happiness of his daughter's life may depend on it. The advice of a friend may be quite sincere but it is not as a rule expert advice. Sometimes it is not at all sincere, but is dictated by a desire to please the person who stands to gain by the capitulation of the man who seeks advice.

Any man or woman who finds himself or herself in any great crisis of life should at once

consult a solicitor and eschew the advice of everyone else. For it must not be forgotten that whereas a solicitor is pledged to secrecy in the case of rash admissions, friends and relations are not. He may not like the solicitor but he can always go to another. And in connection with this I think that a man who wishes to change his solicitor will always be wise to be quite frank about it and to ask his solicitor what he thinks of the other; for the solicitor may know a great deal more about his colleague than his client, and will usually give a perfectly honest opinion in such circumstances. It is of course true that a client in a sudden difficulty may not get very good advice or that he may not like the advice whether good or bad; but he will gain great benefit from discussing his problems with a disinterested person and from being given an opportunity of formulating his own ideas. Nothing is more soothing than to feel that you are sitting in a room with someone who is paid and therefore bound to listen to what one has to say, and a solicitor who is jaded by having

to listen to other people's troubles all day may often find it quite a tonic to talk to a consultant physician about his health.

Nevertheless, human nature is weak, and there are men who cannot feel their work important unless it contributes to their self-importance. This type of man is sometimes depressed by the obscurity of most good professional work. Solicitors cannot complain in these days of any social ostracism; but it is not encouraging for a solicitor to reflect that in his professional capacity he may do a great deal of excellent work without getting much money or any reputation outside a small circle; whereas a man who has served his time as a solicitor may become Prime Minister or a millionaire if he deserts his profession.

I venture to think that no man can succeed as a solicitor unless he consciously or unconsciously feels the vocation of service to humanity; and this is true even of men who have achieved eminence and wealth. I may perhaps take as a particular instance a solicitor who during his lifetime was perhaps better

known to the Press and the public than any other member of his profession. He was not very popular in his profession, for in the first place he was, as "The Times" remarked at the time of his death, perhaps a better private enquiry agent than a lawyer, and he was also by temperament an anarchist who disliked being bound by rules. He was no doubt fond of money and enjoyed getting a large fee whenever he could, especially if his client was rich and foolish. There was therefore always something a little sinister about his professional reputation. On the other hand, it was impossible to meet him, however casually, without liking and admiring him. He was essentially a man, and his shrewdness was preternatural. I met him but seldom; but I happen to know that he was capable of the greatest generosity to his clients and would often do his best work for nothing; and this at a time when he spent far more hours at his office than the modern young solicitor would dream of doing. He also gave much of his energy to public causes, though he would never touch politics. I

mention this because the ordinary man might easily suppose that this solicitor achieved the success he did either because his main object was money or because he enjoyed Mephistophelian intrigues; whereas I am sure that the foundation of his success was a real sense of competence in serving his fellow creatures.

Young men about to choose a profession will be worldly wise if they choose a trade instead of a profession, for there is more money in trade. There is, of course, money for the fortunate at the Bar, on the Stock Exchange, and in political agitation. But there is not much money to-day for the family doctor, the family solicitor, or the clergyman. Men who enter these professions will be unhappy without what Catholics call a sense of vocation—a desire to serve other human beings—or what has been defined as "the religion of pity." A clergyman in his poverty may be free from the temptation to prostitution, in the widest sense of the word, which assails the doctor and the solicitor. But all three will probably desert

their posts without something better than ambition or greed to keep them there.

Saint Paul writes of the Christian duty "to suffer fools gladly." The expression is, as a rule, quoted ironically and with the implication that this particular kind of suffering is lucrative. Undoubtedly no professional man can make money on a large scale without exploiting the fool. Yet there is another reading of what the Apostle meant.

We are all fools some of the time if not all the time. We are all puppets of fortune and the victims of environment or physical accident or overmastering passion. Who of us can cast a stone at another as a fool?

While I work and while I live I shall never forget the solicitor whom I knew best and who taught me my art—for every profession is in a sense an art. He was above all things human, sometimes a little choleric, and not always infallible. He was perhaps rather too easily moved by the tears of the Job Trotters in this wicked world, while on the other hand he entertained an inveterate suspicion of

priests and presbyters and anyone else whom he thought disposed to exercise any tyranny over other persons. He was sometimes a little intolerant when I felt tolerant, but more often benevolent when I was impatient.

Yet even as his articled clerk I assimilated a tradition of welcome to any human being who was desolate or oppressed or, for any reason whatever, miserable. I learned that no man's misfortunes are more easily borne just because they are of his own making. It is not for a solicitor to answer a fool according to his folly or to co-operate with the world at large to exploit that folly. Nothing is, commonly speaking, more essentially contemptible than the feeling of contempt for others. The first duty of a solicitor is to understand and so far as possible to respect his client. It is often not an easy task; it may require much patience, and usually even more charity than astuteness.

I do not wish to underestimate the value of intelligence in a solicitor. No solicitor can afford for a moment to let his brain stop working. But every solicitor should know by

heart and repeat to himself every day of his life:—"Charity suffereth long and is kind; charity envieth not, charity vaunteth not itself, is not puffed up, doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil; rejoiceth not in iniquity, but rejoiceth in the truth; beareth all things, hopeth all things, endureth all things."

There is but one qualification to make. Hope is an excellent quality in itself; but there are limits to its excellence in the region of finance, and in regard to all human affairs "blessed is he who expecteth nothing"—especially from his clients.

I have said that it is a solicitor's duty not to desert his post, that is to say, the interests of his clients; but I should not wish it to be thought that his work has no importance on its public side.

A solicitor who does his work well and without respect of persons often does much more real service to the community than a solicitor who gives up his professional work to enter the House of Commons. A most

interesting volume could be written showing how the liberties of this country, and what is called the liberty of the subject, have been created and are maintained by lawyers in both branches of the profession. I have tried to avoid quoting contemporary examples; but I venture to think that in years to come, when contemporary controversies have vanished into the past, the work of a man like Mr. Gibson Bowles or of a lawyer like Sir John Simon in his own day will shine for posterity no less brightly than the work of a Cobbett or an Erskine. There is in any community an actual legal sovereignty which is not difficult to discover or to define; but beyond and above all this there is what Mr. Laski and Mr. Ivor Brown describe as "an ultimate general sovereignty," which is still more important. For it represents the degree to which the individual citizen accepts or rejects the working of the Executive. Just as the Executive must have the discretionary power which in old days was known as the prerogative of the Crown, so the individual citizen must

have a certain discretionary power in accepting or resisting ordinances which are thrust upon the community without consulting the community by any kind of *referendum*. Even in a Utopian community where every citizen felt himself the creator of the laws which governed him there would still be endless possibilities of collision between the State and the subject. But in any modern community governed by the fashionable democratic despot, who is in turn controlled by far from disinterested persons and corporations, it is the incessant duty of the citizen to resist unjust encroachments on his liberty and right to exercise his judgment on public issues.

To-day it is the lawyer on whom is imposed the sacred duty of defending the liberties of the citizen in the law courts; for even democracy must allow its crudely drafted legislation to be interpreted by judges who have been trained to understand the meaning of words. Here again it is the poor man who will more and more need the first claim on the lawyer, for it is the poor who will more and

more suffer from the increasingly elaborate machinery of the Servile State. But the Servile State will scarcely come to pass unless and until all lawyers have become either hired officials of State or the hired gladiators of the plutocrat. Then indeed, but not till then, the traditions of English history may fail and the British Empire become "one with Nineveh and Tyre."

APPENDIX

In considering the question of "fusion" from the point of view of the American or Canadian lawyer it must be borne in mind that the system practised in the United Kingdom has never been in force in either of these countries. It is, perhaps, significant that one seldom hears either in America or Canada any discussion as to the advisability or feasibility of changing their present arrangements, although undoubtedly the system is not perfect and is open to disadvantages that English lawyers do not have to face.

Having regard to the purposes for which this Appendix is written, it is proposed only to deal with the aspects of the case which demand immediate consideration. What then would be the immediate effects of what is known as fusion as distinct from any remoter results in the future?

The factors affecting the situation can be conveniently dealt with under two heads, first from the point of view of the general public and secondly from the point of view of the legal profession itself.

For the sake of conciseness it may be convenient to deal with both in the form of question and answer.

1. Would the General Public obtain Cheaper Law?

The criticism of many American and Canadian lawyers is that when they have to have work done for them in England they have to pay far more than the same work would cost in their own country. At the same time it is only fair to confess that the same criticism is made by English lawyers when they have work done overseas. I think that the explanation must be sought elsewhere than in an attempt to attribute its cause to the result of either system.

Apart from any such consideration it is doubtful if any system of fusion would tend to make law any cheaper in Great Britain. The fact that solicitors' fees are much lower than counsel's fees, coupled with the number of partners that would be required in a firm under any system of fusion, would all help to ensure that fees would not be curtailed.

2. Would a System of Fusion mean Greater Despatch in dealing with a Client's Business?

At first sight it would appear that it should do so. Undoubtedly the system of having to write instructions to counsel, who is in no way conversant with the subject matter, and then having to arrange for a consultation, makes for delay, and under any system of fusion

this would be done away with. I am inclined to think, however, that the real solution to the question is one of organisation. It will always be the lawyer's office that is best organised and the office in which there is not too much work that will manage to deal promptly with its cases. The real cause of delay in many cases is due to the fact that the individual lawyer or firm is too much sought after and the client must in consequence wait his turn before his affairs are dealt with. I do not really think that the question of fusion affects the prompt handling of business.

3. WOULD A CLIENT OBTAIN BETTER ADVICE?

The evidence here seems all to point to the fact that he would not. Under the system as practised in England a solicitor has the whole field of the Bar to choose from to obtain opinions on any technical or specialist points or for pleading in Court. He is in no way bound to any particular barrister and has no interest except to obtain for his client the best advice and assistance available.

Under the system practised either in Canada or America this is not the case. A firm is naturally biassed in favour of its own barrister partners and as far as possible they are employed. Apart from this there is often reluctance to employ the barrister of another firm, as the result often is that the client

ultimately transfers the conduct of all his affairs to that firm. For the reasons stated I am of the opinion that a system of fusion would not always mean the best advice being obtained for a client.

So much for the case from the point of view of the general public. The following headings will deal with the aspects of the case from the point of view of the profession.

1. How far would a King's Counsel or an eminent Junior be employed outside his own Firm?

In both Canada and America this is often done. To the extent to which it is done the practice becomes more or less similar to our own, and consequently the system has no particular advantages over ours in this respect. From the point of view of the firm to which the K.C. belongs who is often employed by outside firms, the result is not altogether happy. He is unable to give much attention to the ordinary routine work of the firm and is of little assistance as regards interviewing clients, etc. Other aspects of this case are covered in the extracts from the letter of a Canadian lawyer given at the end of this Appendix.

2. How is the question of Fees and Costs affected under a system of Fusion?

In both Canada and America these are charged separately, and though in practice many fees for conferences or consultations do not appear which under our system would be charged for, there is not much difference in the ultimate result. I do not think that a good costs-clerk would have much difficulty in dealing with the dual system, although undoubtedly it involves more knowledge and trouble than our present system.

3. How would Fusion affect Individuals of either branch of the Profession?

It is difficult to deal with this question, for so much depends on the individual. From the point of view of junior members of both branches of the profession the Canadian or American system is certainly advantageous and would be of assistance in this country. Junior members of the Bar would at once be assured of an income in excess of what they can expect now at the outset of their careers, and solicitors who are practising in a small way would obtain a right of audience at present denied them. As regards leading firms or successful barristers it is doubtful if a change of system in either country would bring them much advantage.

In conclusion, therefore, it would appear that little is to be gained in this country by fusion when all the factors affecting the situation are taken into consideration.

I give below extracts from a letter written by a Canadian lawyer which may be of interest.

"(1) The first question asked is: Where a leading counsel (either a K.C. or a leading junior) is a member of a firm, can he be employed by other firms on behalf of their clients, and if so, what is the procedure? Answer: Yes, this can be and continually is done. A solicitor would frequently take the advice of an eminent man in another firm or employ him to conduct cases or motions as occasion may require. The counsel will then render his bill to the solicitor who employs him. In most cases the fee earned by the counsel goes into the general funds of his firm and constitutes part of its regular revenue.

"To supplement the above we should say that it is a very common practice of solicitors and junior barristers to retain a leader in important cases. At the trial he then appears as leading counsel for his side, and the solicitor who retains him (who, of course, is also a barrister) appears as junior counsel on the same side.

"(2) How does the fusion of barristers and solicitors affect the question of costs? Counsel's fees and solicitors' fees are theoretically different and

are kept nominally separate; thus a bill of costs distinguishes between solicitor's service and counsel fees. Counsel's fees appear in the column headed 'disbursements' just as though they had been paid out to an outside counsel, whereas, as a matter of fact, they are merely the counsel's fees charged by a member of the firm rendering the bill.

"Under this question it is asked whether the effect is to make law cheaper. That we cannot say with any certainty. Our experience of having work done for us in England is that it is much more expensive than similar work done here, and I think that is the usual experience of solicitors in this Province who have occasion to employ either solicitors or barristers in England, and I am inclined to think that legal work would cost more in this province if the lawyers were divided into two classes than it costs at present.

"The effect of the present position is that a lot of counsel business that arises casually in the conduct of a client's affairs is not charged for at the same rate it would be if we had to go through the formality of an appointment and a consultation with an outsider.

"(3) It is asked whether firms have a special partner who does little office work and mostly Court business. Answer: A few firms do, but only a few, because there are but few firms that have business enough to keep an eminent man constantly employed in Court

"(4) I am of the opinion that there is one bad result from the fusion of barristers and solicitors, that is to say:—Solicitors have an anxiety about retaining an outside counsel to conduct their cases or to give opinions because they thereby minimise their own importance in the eyes of their clients, and what frequently happens is that the next time the same clients have important business they take it straight to the man who is employed as leader in the previous case. The effect of this fear is that many solicitors conduct their own cases and act as their own counsel without really being qualified so to do, and the effect of this is that counsel's work is not as well done as it should be if conducted by a man who did nothing else."

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